

UNITED STATES DISTRICT COURT **ORIGINAL**

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CLAUDIA WILKEN, JUDGE

IN RE STATIC RANDOM ACCESS) NO. MDL 07-01819 CW
MEMORY (SRAM) ANTITRUST)
LITIGATION)

PAGES 1 - 95

THIS DOCUMENT RELATES TO:)
ALL DIRECT AND INDIRECT)
PURCHASER ACTIONS)

OAKLAND, CALIFORNIA

THURSDAY, DECEMBER 14, 2010

TRANSCRIPT OF PROCEEDINGS

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GARY A. WINTERS, ATTORNEYS AT LAW

--000--

1 TUESDAY, DECEMBER 14, 2010

2:23 P.M.

2 P R O C E E D I N G S

3 **THE CLERK:** WE'RE CALLING 07-1819, IN RE: SRAM
4 ANTITRUST LITIGATION. PLEASE STEP FORWARD AND STATE YOUR
5 APPEARANCES FOR THE RECORD, PLEASE.

6 **MR. MCGINNIS:** GOOD AFTERNOON, YOUR HONOR. JIM
7 MCGINNIS FOR THE SAMSUNG DEFENDANTS OF SHEPPARD MULLIN. I'M
8 HERE WITH MR. SCARBOROUGH, WHO I BELIEVE YOU KNOW, AND MONA
9 SOLOUKI, AND ERIC O'CONNOR, AND DEPENDING UPON THE SUBJECT YOUR
10 HONOR WISHES TO ADDRESS, ONE OF US WILL SPEAK TO YOU.

11 **MR. CONNELLY:** GOOD AFTERNOON. VINCENT CONNELLY ON
12 BEHALF OF DEFENDANT CYPRESS. I'M HERE WITH MY COLLEAGUES GARY
13 WINTERS AND LEE RUBIN.

14 **MR. SAVERI:** GOOD AFTERNOON, YOUR HONOR. GUIDO
15 SAVERI FOR --

16 **THE COURT:** YOU'RE GOING TO NEED TO TAKE THE MIKE
17 THERE, I'M AFRAID.

18 **MR. SAVERI:** GOOD AFTERNOON, YOUR HONOR. GUIDO
19 SAVERI FOR THE DIRECT PLAINTIFFS.

20 **THE COURT:** FOR THE WHICH?

21 **MR. SAVERI:** DIRECT PLAINTIFFS.

22 **THE COURT:** OH, OKAY.

23 **MR. COTCHETT:** GOOD AFTERNOON, YOUR HONOR. JOSEPH
24 COTCHETT, STEVEN WILLIAMS, AND NEIL SWARTZBERG FOR THE DIRECT
25 PLAINTIFFS.

1 **MR. MICHELETTI:** GOOD AFTERNOON, YOUR HONOR. CHRIS
2 MICHELETTI ON BEHALF OF THE INDIRECT PURCHASER PLAINTIFFS.

3 **THE COURT:** ALL RIGHT. GOOD AFTERNOON.

4 SO I GUESS YOU DON'T HAVE ANY BIG NEWS FOR ME.

5 **MR. COTCHETT:** WELL, WE DO.

6 IT'S NOT BIG BIG, BUT IT'S JUST BIG. WE ARE TALKING,
7 AND WE ARE HOPEFULLY GETTING CLOSE. I THINK SOME DECISIONS
8 TODAY SPECIFICALLY ON HOW THE TRIAL IS POSTURED -- THAT'S REALLY
9 THE ONLY BIG ISSUE BEFORE US. IF WE CAN DETERMINE HOW THE TRIAL
10 IS POSTURED, I THINK WE'LL HAVE SOME RESOLUTIONS.

11 **THE COURT:** OKAY.

12 **MR. COTCHETT:** WE WOULD OBVIOUSLY HAVE SOME THOUGHTS
13 ON THAT WHEN YOU'RE READY --

14 **THE COURT:** WELL, WHY DON'T I JUST GO AHEAD AND TELL
15 YOU EVERYTHING THAT I'VE COME UP WITH SO FAR OR WHERE I'M
16 THINKING ON THESE VARIOUS THINGS, AND THEN YOU CAN TELL ME WHERE
17 YOU DISAGREE.

18 **MR. MCGINNIS:** YOUR HONOR, MAY I JUST ADD ON THE
19 SUBJECT OF NEWS? THE DISCUSSIONS MUST BE AWFUL QUIET BECAUSE
20 NEITHER MR. HOLING OR I KNOW ABOUT THEM, BUT WE'VE SETTLED WITH
21 THE INDIRECT PLAINTIFFS FOR SAMSUNG. AND --

22 **THE COURT:** WELL, THAT WAS A WHILE BACK.

23 **MR. MCGINNIS:** THAT WAS A WHILE BACK, AND THERE HAVE
24 NOT BEEN DISCUSSIONS WITH THE DIRECT PLAINTIFFS, NOR HAS ANY NEW
25 MEDIATION BEEN SCHEDULED. SO IF THERE ARE DISCUSSIONS INVOLVING

1 US, THEY'RE AWFULLY QUIET BECAUSE I DON'T KNOW ABOUT THEM.

2 **THE COURT:** WELL, OKAY. WELL, LET'S REVISIT THAT
3 AGAIN AT THE END OF THE SESSION. BUT I -- IF YOU HAVEN'T SEEN
4 JUDGE WEINSTEIN LATELY, THEN I'M GOING TO ASK YOU ALL TO GO BACK
5 TO HIM WHEN WE FINISH. SO IF THAT'S TRUE AND NOBODY'S TALKING
6 TO YOU, THEN YOU'LL NEED TO GO TO JUDGE WEINSTEIN, AND HE'LL
7 MAKE SURE SOMEONE TALKS TO YOU.

8 OKAY. WELL, I GUESS THE FIRST QUESTION IS THE ONE
9 YOU ASKED LAST TIME, WHICH IS HOW WOULD THE CASES BE TRIED. AND
10 I'M STILL THINKING THAT THE BEST WAY TO DO IT WOULD BE TO START
11 WITH THE TRIAL THAT INVOLVES BOTH SETS OF PLAINTIFFS AND BOTH
12 DEFENDANTS AND IS ADDRESSED ONLY TO THE EXISTENCE OR NOT OF AN
13 ANTITRUST CONSPIRACY IN FRONT OF ONE JURY.

14 ONCE WE -- NOW, THERE MIGHT BE SOME FINE-TUNING THERE
15 AS FAR AS HOW MUCH IMPACT TESTIMONY COMES IN, DOES IT OR DOESN'T
16 IT, WHERE DO YOU DRAW THE LINE. BUT THE BASIC QUESTION WOULD BE
17 DID THESE PEOPLE GET TOGETHER AND AGREE ON SOMETHING OR DID THEY
18 NOT.

19 THEN WE WOULD EXCUSE THE INDIRECT PURCHASER
20 PLAINTIFFS AND PROCEED WITH THAT SAME JURY TO DECIDE IMPACT AND
21 DAMAGES FOR THE DIRECT PURCHASER PLAINTIFFS.

22 AFTER THAT, WE WOULD IMPANEL A NEW JURY WHICH WOULD
23 BE INSTRUCTED AS TO THE RESULT OF THE CONSPIRACY TRIAL UNLESS,
24 OF COURSE, THE RESULT WAS A DEFENSE VERDICT, IN WHICH CASE WE
25 WOULD HAVE ALL GONE HOME BY THAT TIME. BUT ASSUMING THERE'S A

1 VERDICT AGAINST ONE OR BOTH DEFENDANTS, THE SECOND JURY WOULD BE
2 INFORMED OF THAT, AND THEY WOULD THEN HEAR ABOUT IMPACT AND
3 DAMAGES FOR THE INDIRECT PURCHASERS, AT LEAST THEIR ANTITRUST
4 CLAIMS.

5 THIS IS WHERE I GO OFF THE RAILS A LITTLE BIT BECAUSE
6 EVEN AT THAT, I CAN'T SEE TRYING ONE TRIAL EVEN FOR DAMAGES,
7 EVEN JUST FOR INDIRECTS WITH 25 STATES. I'M JUST NOT GOING TO
8 PICK ONE JURY AND TELL THEM YOU'RE NOW GOING TO DECIDE CLAIMS
9 BASED ON 25 DIFFERENT STATE LAWS, SO WE WOULD HAVE TO DO
10 SOMETHING THERE. AND I DON'T KNOW WHAT THAT WOULD BE.

11 ONE POSSIBILITY IS REMAND PERHAPS OF THE CASES THAT
12 WERE NOT FILED IN CALIFORNIA IN THE FIRST PLACE. I THINK
13 THERE'S 12 OF THEM OR 18 OF THEM, SOMETHING LIKE THAT.

14 NOW, ANOTHER POSSIBILITY WOULD BE A BELLWETHER TRIAL,
15 YOU KNOW, PICKING THE MOST GENERIC OR TYPICAL OF THE STATE
16 CLASSES. WE COULD MAYBE DO FIVE STATES AT A TIME -- MAYBE THAT
17 WOULDN'T BE TOO MUCH -- AND HAVE A SUCCESSION OF TRIALS,
18 HOPEFULLY WHICH WOULD BE -- THE FIRST ONE WOULD BE SORT OF A
19 BELLWETHER, AND ONE MIGHT HOPE THAT THE REMAINING ONES WOULD
20 SETTLE AFTER THAT POINT.

21 ON THAT REMAND POINT, I KNOW CYPRESS THINKS IT HAS A
22 RIGHT TO REMAND. I DON'T. I THINK LIKE THE POINT OF U LEXECON
23 IS TO ENSURE THE PLAINTIFFS' CHOICE OF FORUM, BUT AS LONG AS
24 THERE'S PROPER VENUE AND JURISDICTION IN THIS DISTRICT, AS LONG
25 AS THE PLAINTIFFS STIPULATE AND -- AND I DO THINK THE PLAINTIFFS

1 WOULD HAVE TO ACTUALLY STIPULATE AND NOT JUST THE FILING OF THE
2 CONSOLIDATED AMENDED COMPLAINT SORT OF INDICATES THAT THAT'S
3 WHAT YOU WANT, BUT I THINK UNDER ONE OF THE CASES I SAW
4 SOMEWHERE, WE WOULD NEED AN ACTUAL STIPULATION.

5 BUT IF WE GOT ONE, THEN I THINK THAT WE COULD TRY ALL
6 THOSE INDIRECT CASES HERE. BUT ON THE OTHER HAND, WE COULD SEND
7 SOME OF THEM BACK AND I'M CERTAINLY OPEN TO THAT POSSIBILITY,
8 ESPECIALLY IF WE END UP HAVING TO HAVE A WHOLE BUNCH OF TRIALS
9 IN A ROW. I'M NOT SURE WHICH OF THE STATES ARE THE ONES THAT
10 WEREN'T FILED HERE. I SUPPOSE WE COULD EVEN SEND SOME BACK THAT
11 WERE FILED HERE BUT THAT CAME FROM SOME OTHER STATE. I MEAN,
12 ALL THOSE THINGS WOULD BE SORT OF POSSIBILITIES. BUT THEY WOULD
13 ALL GO BACK WITH THE VERDICT IN HAND. I WOULD THINK THE VERDICT
14 ON THE CONSPIRACY WOULD BE RES JUDICATA OR COLLATERAL ESTOPPEL,
15 AND ALL THAT WOULD HAVE TO BE TRIED EITHER HERE OR IN THOSE
16 REMAND JURISDICTIONS TO BE IMPACTS AND DAMAGES FOR INDIRECT
17 PURCHASERS.

18 SO THAT'S WHAT I'M THINKING ABOUT THAT.

19 I HAVE A BIG PROBLEM WITH DAMAGES. I DON'T REALLY
20 UNDERSTAND HOW -- WELL, I GUESS IF WE DO WHAT I'M SAYING, WE
21 WOULDN'T HAVE THE PROBLEM OF THE PASS-THROUGH VERSUS PASS-ON
22 DILEMMA. AND THAT'S ONE ADVANTAGE OF NOT TRYING THE DP'S AND
23 THE IP'S TOGETHER. AT LEAST WE DON'T HAVE TO TRY TO EXPLAIN IT
24 TO A JURY, BUT WE DO HAVE TO RESOLVE IT AT SOME POINT AND I
25 DON'T KNOW WHAT THE ANSWER IS.

1 LET'S SAY THERE'S A BIG VERDICT FOR THE DP'S AND THEN
2 A VERDICT FOR THE IP'S. WE HAVE A DOUBLE RECOVERY. WE CAN'T --
3 IT SEEMS TO ME THAT WOULDN'T BE ALLOWED. THERE HAS TO BE SOME
4 SORT OF METHOD OF ALLOCATING. I KNOW THE JURY WOULDN'T HEAR
5 ABOUT IT, AND THE JURY WOULD BE TOLD FOR THE DP'S TO AWARD ALL
6 THE DAMAGES AND THAT THERE'S NO PASS-ON DEFENSE AND THIS AND
7 THAT.

8 BUT IN THE END, WHEN WE COME DOWN TO ACTUALLY WRITING
9 CHECKS, YOU DON'T GET IT TWICE, I DON'T THINK, OR THE DEFENDANTS
10 DON'T TO HAVE PAY IT TWICE. SO SOMEHOW THAT WOULD HAVE TO BE
11 ALLOCATED, AND I DON'T QUITE KNOW HOW ONE WOULD DO THAT. BUT
12 YOU'RE GOING TO HAVE TO COME UP WITH SOMETHING.

13 AND FURTHERMORE, I DON'T UNDERSTAND HOW THE
14 SETTLEMENT AMOUNTS WOULD FIGURE INTO THAT. NOBODY'S ASKED FOR
15 ONE OF THESE GOOD-FAITH DETERMINATIONS OF DAMAGES FOR MULTIPLE
16 TORTFEASORS. I DON'T KNOW IF THAT'S THE PROCEDURE OR HOW IT
17 WOULD WORK IF THE DAMAGES FOR THE WHOLE CONSPIRACY WERE FOUND
18 AND THEN SOMEHOW ALLOCATED BETWEEN IP'S AND DP'S, THEN HOW DOES
19 THE SETTLEMENT MONEY PLAY INTO IT? SO THERE'S ANOTHER ISSUE
20 THAT'S NOT CLEAR TO ME.

21 LET'S SEE. THIS IS MINOR COMPARED TO THAT, BUT IN
22 TURN -- JUST 'CAUSE IT'S ON MY LIST, WHEN WE'RE DEALING WITH THE
23 JURY AND THESE ISSUES, ARE WE GOING TO NEED TO DIFFERENTIATE
24 BETWEEN TWO SAMSUNG ENTITIES, OR CAN WE SOMEHOW ASSUME THAT
25 THEY'LL WORK IT OUT AMONGST THEMSELVES? IT'S JUST -- WOULD BE A

1 LOT EASIER NOT TO HAVE VERDICT FORMS WITH LISTS THAT INCLUDE
2 SAMSUNG TWICE ALL THE TIME AND JURY INSTRUCTIONS THAT TALK ABOUT
3 THEM TWICE. MAYBE YOU DON'T KNOW RIGHT NOW, BUT IF YOU DON'T,
4 FIND OUT SOON WHETHER WE --

5 **MR. MCGINNIS:** I THINK THAT COULD BE RESOLVED, YOUR
6 HONOR. I THINK THAT'S THE LEAST OF OUR PROBLEMS.

7 **THE COURT:** WELL, I KNOW, BUT IT'S ON MY LIST.

8 AND THE SAME GOES FOR THE OTHER DEFENDANTS. I SEE IN
9 THE VERDICT FORMS WHERE WE'RE MAKING LONG LISTS OF ALL OF THEM,
10 AND THEY'RE, YOU KNOW, MICRON THIS, MICRON THAT, MICRON THE
11 OTHER; ISSI THIS, ISSI THAT. IT WOULD BE, AGAIN, MUCH EASIER IF
12 WE COULD AGREE THAT EACH ENTITY INCLUDES ALL OF ITS LITTLE
13 SUB-ENTITIES AND THEY DON'T ALL HAVE TO BE DECIDED SEPARATELY.

14 IN TERMS OF OTHER TRIAL ISSUES, I DON'T LIKE TO HAVE
15 WITNESSES CALLED BY MULTIPLE PARTIES. I ALWAYS TELL PEOPLE THAT
16 THE PLAINTIFFS SHOULD CALL WHO THEY'RE GOING TO CALL AND TO THE
17 EXTENT THE DEFENDANTS HAVE QUESTIONS OF THOSE WITNESSES, THE
18 DEFENDANTS ASK THEM WHILE THEY'RE THERE ON THE PLAINTIFF'S SIDE.
19 WE EXPLAIN THAT TO THE JURY, HOW MUCH SHORTER IT MAKES THE
20 TRIAL, HOW CONVENIENT IT WILL BE FOR THEM. THEY'RE FINE WITH
21 IT.

22 IT MAKES MUCH MORE SENSE TO DO THE TESTIMONY IN
23 CHRONOLOGICAL ORDER ALL AT ONE TIME THAN HAVING PEOPLE COME
24 BACK. THE ONLY EXCEPTION IS OCCASIONALLY A DEFENDANT WILL SAY,
25 OH, I DON'T WANT MY GUY TO BE TALKING IN THE PLAINTIFF'S CASE.

1 I WANT MY GUY TO BE TALKING LATER.

2 IF THAT'S THE CASE, AND IF THE PLAINTIFF NEEDS THE
3 PERSON ONLY FOR SOME SORT OF PRO FORMA OR A FEW LITTLE THINGS OR
4 SOME ELEMENT OF ITS CASE-IN-CHIEF OR SOME ADMISSION OR SOME SUCH
5 THING, THEN YOU COULD TRY TO WORK OUT SOMETHING WHERE THE
6 PLAINTIFF RESTS CONTINGENT UPON GETTING SOME LITTLE PIECE OF
7 EVIDENCE OUT OF THAT DEFENSE WITNESS WHEN THAT DEFENSE WITNESS
8 COMES ON AND DELAYS THE JMOL MOTIONS AND SO ON.

9 BUT REALLY IT WORKS BETTER, I THINK, IF THE WITNESSES
10 ARE JUST CALLED IN THE PLAINTIFF'S CASE AND -- AND THE DEFENSE
11 DOES ITS DIRECT AT THAT TIME. SAMSUNG PROPOSED A SORT OF
12 VARIANT OF THAT. THIS WOULD BE A LITTLE MORE MANDATORY THAN THE
13 VARIANT THAT YOU PROPOSE, WHICH IS YOU GET TO DO WHATEVER YOU
14 WANT. BUT I THINK IN THE END, IT WORKS BEST FOR DEFENDANTS AS
15 WELL.

16 WE WILL HAVE TO HAVE TIME LIMITS. WE'LL FIGURE OUT
17 HOW LONG THE CASE OUGHT TO TAKE ALL TOGETHER, AND WE'LL DIVIDE
18 IT UP. MY, I GUESS, DEFAULT WOULD BE HALF TO PLAINTIFFS, HALF
19 TO DEFENDANTS. TO THE EXTENT THAT PLAINTIFFS AND DEFENDANTS
20 CAN'T AGREE AMONGST THEMSELVES, HALF OF THE PLAINTIFFS' TIME TO
21 EACH HALF, AND HALF OF THE DEFENDANTS' TIME TO EACH DEFENDANT,
22 AND THEN YOU WORK OUT YOUR DEALS AFTER THAT.

23 EVERYBODY HAS TO KEEP TIME AND DOUBLE-CHECK IT WITH
24 EACH OTHER AT THE END OF EACH DAY SO THAT WE KNOW DAY BY DAY HOW
25 MUCH EACH OF YOU HAS USED. YOUR TIME IS YOUR ARGUMENT, YOUR

1 DIRECT, YOUR CROSS. IF YOU MAKE LENGTHY OBJECTIONS, THAT
2 COUNTS.

3 ON THE COCONSPIRATOR TESTIMONY, I THOUGHT THAT WHAT
4 YOU DESCRIBED JUDGE HAMILTON DOING MADE A LOT OF SENSE. THE WAY
5 IT -- WE USED TO DO IT IN CRIMINAL CASES WAS TO SORT OF HAVE THE
6 U.S. ATTORNEY BASICALLY TRY TO PROVE UP AT LEAST A PRIMA FACIE
7 CASE OF CONSPIRACY SORT OF FIRST THING SO THAT I CAN HAVE SOME
8 CONFIDENCE THAT, YES, IT'S LIKELY WE'RE GOING TO HAVE A
9 CONSPIRACY HERE AND IT'S LIKELY THAT MOST OF THESE PEOPLE ARE
10 GOING TO BE IN IT. AND THEN FROM THERE, WE CAN FEEL A LITTLE
11 MORE COMFORTABLE ADMITTING COCONSPIRATOR TESTIMONY SUBJECT TO
12 STRIKING.

13 BUT THEN TO ADD TO THAT THE NOTION THAT SOME PERIOD
14 OF TIME BEFORE EACH TRIAL DAY, WHETHER IT'S A WEEK BEFORE, A DAY
15 BEFORE, WHATEVER COULD BE WORKED OUT, WE GET FROM THE PLAINTIFFS
16 WHAT SPECIFIC COCONSPIRATOR STATEMENTS THEY THINK THEY OUGHT TO
17 BE ABLE TO BRING IN, WHO THE COCONSPIRATOR WAS, WHEN THEY JOINED
18 THE CONSPIRACY, WHEN THEY LEFT THE CONSPIRACY, HOW THIS
19 STATEMENT WAS IN FURTHERANCE OF THE CONSPIRACY, AND HOW IT WAS
20 DURING THE COURSE OF THE CONSPIRACY AND HAVE THAT RULED ON IN
21 SOME KIND OF WAY BEFORE IT ACTUALLY HITS THE FAN IN COURT.

22 SO THAT WOULD BE THE IDEA.

23 ON THE JURY, WE WILL DO A JURY QUESTIONNAIRE. LATELY
24 I'VE BEEN -- WELL, YOU CAN GET MY -- THE STANDARD ONE ATTACHED
25 THAT PRETRIAL ORDER, WHICH IS THE ONE I USED TO DO. BUT LATELY,

1 I'VE BEEN ADDING MUCH MORE SUBSTANTIVE STUFF RIGHT INTO THE JURY
2 QUESTIONNAIRE, AND IT WORKS QUITE WELL. SO I DON'T THINK YOU
3 GAVE ME ANY VOIR DIRE -- OR DID I MISS IT? DID YOU GIVE ME VOIR
4 DIRE?

5 **MR. COTCHETT:** NO.

6 **MR. MCGINNIS:** NOT YET, YOUR HONOR.

7 **THE COURT:** OKAY. SO AT A CERTAIN POINT, YOU SHOULD
8 TALK TO EACH OTHER ABOUT WHAT YOU WOULD LIKE TO SEE IN A
9 QUESTIONNAIRE IN A CASE OF THIS LENGTH.

10 I ALSO PREQUALIFY THEM FOR HARDSHIP, AND I USUALLY
11 SEND OUT A QUESTIONNAIRE IN ADVANCE AND HAVE THEM WRITE BACK AND
12 TELL ME THEIR HARDSHIPS.

13 THE JURY OFFICE IS TELLING ME NOW THEY FIND IT WORKS
14 BETTER IF WE ACTUALLY HAVE THEM COME IN AND FILL OUT THE FORM
15 AND THEN I GO THROUGH IT AND SEE WHO'S GOT A HARDSHIP. SO I MAY
16 TRY THAT, BUT THE QUESTIONNAIRE -- IT NEEDS TO BE FAIRLY SHORT,
17 AND I CAN GIVE YOU SOME SAMPLES OF THEM. THEY'RE NOT ON MY WEB
18 PAGE, BUT I COULD TRY TO REMEMBER TO PUT SOME UP THERE SO YOU
19 COULD TAKE A LOOK AT THEM.

20 I THINK, YOU KNOW, MAYBE FOUR PAGES, FIVE PAGES,
21 SOMETHING LIKE THAT, NOT SOMETHING THAT'S GOING TO TAX THEM.
22 NONE OF THIS WHAT MAGAZINES DO YOU READ, WHAT T.V. SHOWS DO YOU
23 WATCH, BUT, YOU KNOW, ACTUAL STUFF THAT WE NEED.

24 AND THEN I WOULD DO SOME KIND OF FOLLOW-UP, GO
25 THROUGH AND THE PERSON WHO SAYS, YOU KNOW, MY -- MY DOG WAS

1 KILLED BY A ANTITRUST VIOLATOR, I CAN'T SERVE, YOU KNOW, THEN I
2 FOLLOW UP ON THAT.

3 **MR. COTCHETT:** IF WE COULD GET FROM YOUR CLERK A
4 COUPLE OF THOSE SAMPLES, THAT WOULD BE HELPFUL.

5 **THE COURT:** YEAH, I'LL GET THEM SOMEHOW OR OTHER.

6 **MR. COTCHETT:** THAT WOULD BE GREAT.

7 **THE COURT:** THEN PROBABLY I WOULD ALLOW SOME ATTORNEY
8 VOIR DIRE AFTER THAT, VERY LITTLE, BUT SOME. MAYBE A HALF AN
9 HOUR PER ENTITY OR SOMETHING LIKE THAT JUST FOR FOLLOW-UP
10 PURPOSES AND KIND OF EDUCATION AND GETTING-TO-KNOW-YOU PURPOSES.
11 SO YOU SHOULD LOOK AT MY QUESTIONNAIRES AND THEN MAYBE YOU COULD
12 AGREE ON SOMETHING OR AT LEAST SUBMIT PROPOSED ONES.

13 IN TERMS OF THE MOTIONS IN LIMINE, STARTING WITH THE
14 DIRECT PURCHASERS, IN NUMERICAL ORDER, NUMBER ONE IS EXCLUDE THE
15 CLOSING OF THE INVESTIGATION REGARDING SRAM. I WOULD GO ONE
16 BETTER THAN THAT AND ALSO EXCLUDE THE OPENING OF THE
17 INVESTIGATION REGARDING SRAM. SO THAT THE SRAM INVESTIGATION
18 WOULD NOT COME IN AT ALL, NEITHER ITS OPENING NOR ITS CLOSING.

19 NO. 2, EXCLUDE EVIDENCE OF WESTELL'S LACK OF DAMAGES.
20 I WOULDN'T EXCLUDE IT. HE WILL HAVE TO PROVE DAMAGES IF HE CAN,
21 I SUPPOSE. BUT IT WON'T BE FOR THE JURY TO DECIDE WHETHER HE
22 HAS STANDING OR NOT. THAT -- I MEAN, IF THAT'S WHAT YOU'RE
23 GETTING AT, THAT'S NOT A JURY ISSUE. SO IT WOULD NOT BE ARGUED
24 THAT IF HE DOESN'T HAVE ANY DAMAGES, HE DOESN'T HAVE STANDING
25 AND THE WHOLE CASE GOES OUT. THAT WON'T BE HAPPENING.

1 SO IT'S NOT TABOO OR OFF LIMITS THAT HE DIDN'T BUY
2 DURING THE DAMAGES SUBPERIOD, BUT NEITHER WILL IT HAVE ANY LEGAL
3 EFFECT.

4 **MR. COTCHETT:** THAT WAS YOUR RECENT RULING THE OTHER
5 DAY.

6 **THE COURT:** RIGHT, BUT THAT'S HOW IT WOULD PLAY OUT
7 AT THE TRIAL AS I SEE IT.

8 **MR. COTCHETT:** YES.

9 **THE COURT:** EXCLUDE EVIDENCE OF FAILURE TO MITIGATE.
10 THAT'S NO. 3. NO OPPOSITION. GRANTED.

11 NO. 4, EXCLUDE REFERENCE TO TREBLE DAMAGES AND
12 ATTORNEYS' FEES. MY INCLINATION WOULD BE TO EXCLUDE IT. I KIND
13 OF DON'T THINK PEOPLE WOULD REALLY NECESSARILY KNOW ABOUT THAT,
14 BUT IF IT COMES PAST THAT WE HEAR THEM CHITCHATTING AT LUNCH
15 ABOUT TREBLE DAMAGES, THEN WE WOULD GIVE THEM AN INSTRUCTION
16 THAT TREBLE DAMAGES ARE NOT THEIR CONCERN AND THAT THEY
17 SHOULDN'T CONSIDER IT OR SPECULATE ABOUT IT. BUT WE CAN WORRY
18 ABOUT THAT LATER.

19 NO. 5, EXCLUDE EVIDENCE THAT DP'S PASSED ON EXCESS
20 COSTS. WELL, WE TALKED ABOUT THIS EARLIER. YES, IF IT WERE
21 ONLY A DP TRIAL, WE WOULD EXCLUDE EVIDENCE FROM THE JURY THAT
22 THE DP'S MAY HAVE PASSED DOWN THEIR EXCESS COST. BUT IN THE
23 END, THAT HAS TO BE ACCOUNTED FOR IN SOME KIND OF WAY, NOT BY
24 THE JURY.

25 **MR. COTCHETT:** SO THAT'S GRANTED, YOUR HONOR?

1 **THE COURT:** YEAH. I'M GIVING YOU SORT OF MY
2 INCLINATION HERE.

3 (SIMULTANEOUS COLLOQUY.)

4 **THE COURT:** I'M WILLING TO HEAR A SMALL AMOUNT OF
5 ARGUMENT ON SOME OF THESE, BUT THAT'S MY INCLINATION.

6 NO. 6, EXCLUDE REFERENCE TO THE CLASS REPS' FINANCES,
7 FEE DEALS, OTHER LAWSUITS. GENERALLY, I WOULD GRANT THAT. IT
8 DOESN'T SEEM RELEVANT TO ME. IF THERE IS SOMETHING THAT IS
9 RELEVANT, I WOULD WANT A PROFFER BEFORE ANY REFERENCE WAS MADE
10 TO IT.

11 AND THE ONLY THING I CAN IMAGINE THAT MIGHT BE
12 RELEVANT WOULD BE IF THERE WAS SOME SORT OF HYPOTHETICAL DEAL
13 WITH PLAINTIFFS' COUNSEL THAT PROVIDED SOME SORT OF FINANCIAL
14 INCENTIVE. IF YOU WIN THIS CASE, I'LL GIVE YOU SOME OTHER CASE,
15 OR SOMETHING -- SOMETHING LIKE THAT.

16 IF YOU HAVE EVIDENCE LIKE THAT, I WOULD HEAR IT, AND
17 PERHAPS IF THAT LED TO SOME SORT OF FINANCIAL INTEREST OR BIAS,
18 CONCEIVABLY THAT COULD COME IN. BUT OTHER THAN THAT, I DON'T
19 SEE THE RELEVANCE OF WESTELL'S FINANCES, ET CETERA.

20 NOW, THE NEXT ONE, NO. 7, IS THE SAME EXCEPT WITH --
21 AS ADDRESSED TO OTHER CLASS MEMBERS. AND AS ADDRESSED TO
22 INDIRECT PURCHASERS.

23 AND I WOULD SAY THAT WITH RESPECT TO OTHER CLASS
24 MEMBERS AND PERHAPS TO INDIRECT PURCHASERS TO THE EXTENT THEIR
25 SIZE IS RELEVANT TO EXPERT ISSUES, SUCH AS BUYING POWER,

1 NEGOTIATING POWER, THAT SORT OF THING, THEN IT COULD BE RELEVANT
2 FOR THAT PURPOSE.

3 YOU KNOW, WE'RE TALKING INTEL HERE, THEY'RE UMPY-UMP
4 BIG, AND THEY HAVE THIS AND THAT POWER. PERHAPS SO.

5 IF IT'S LIKE MR. JONES, YOU KNOW, MAKES \$50,000, NO.

6 SO TO THE EXTENT IT'S RELEVANT TO SOME OTHER POINT,
7 IT WOULD PERHAPS COME IN. BUT OTHERWISE, THE FINANCES OF CLASS
8 MEMBERS WOULDN'T BE RELEVANT.

9 NO. 8, EXCLUDE REFERENCES TO SETTLEMENT. WE WOULD
10 PROBABLY HAVE TO GIVE SOME SORT OF INSTRUCTION EXPLAINING THAT
11 THERE WERE AT ONE TIME OR THERE ARE OTHER PEOPLE WHO ARE
12 ARGUABLY INVOLVED. THE JURY SHALL NOT CONCERN ITSELF WITH WHAT
13 MAY OR MAY NOT HAVE HAPPENED WITH RESPECT TO THOSE OTHER
14 PARTICIPANTS. JUST LISTEN TO THEIR TESTIMONY.

15 SO CERTAINLY NO SETTLEMENT AMOUNTS WOULD COME IN.
16 THE FACT THAT THERE WAS A SETTLEMENT PROBABLY WOULD NOT COME IN.
17 ALL THAT WOULD COME IN WOULD BE THESE PEOPLE ARE NOT BEFORE YOU
18 AND YOU DON'T NEED TO WORRY ABOUT WHY THAT IS OR SPECULATE ABOUT
19 IT.

20 NO. 9, EXCLUDE OPT-OUTS AND SEPARATE SETTLEMENTS.
21 THERE'S NO OPPOSITION TO THAT, SO IT WOULD BE GRANTED.

22 NO. 10, EXCLUDE EXPERTS -- YOU'RE CALLING IT LEGAL
23 CONCLUSIONS. I'D SAY WHAT YOU'RE REALLY TALKING ABOUT IS
24 EXCLUDE EXPERTS OPINIONS ON THE ULTIMATE ISSUE. WHAT YOU'RE
25 REALLY SAYING IS THE EXPERTS CAN'T SAY, I THINK THERE WAS A

1 CONSPIRACY. I THINK THESE PEOPLE DID, IN FACT, CONSPIRE.

2 AND WHAT I'LL SAY THERE IS, ALTHOUGH THIS ISN'T
3 ALWAYS THE CASE, WHAT'S GOOD FOR THE GOOSE IS GOOD FOR THE
4 GANDER. IF THE PLAINTIFFS' EXPERTS ARE GOING TO SAY SUCH
5 THINGS, THEN, OF COURSE, THE DEFENDANTS' EXPERTS WILL BE ABLE TO
6 AS WELL. BUT MY PREFERENCE WOULD BE THAT NEITHER DOES, THAT
7 BOTH SIDES' EXPERTS ADDRESS THESE ARE THE FACTORS THAT USUALLY
8 CONTRIBUTE. I SEE SUCH -- I SEE THESE FACTORS X, Y, AND Z HERE,
9 BUT NOT TAKE THAT NEXT STEP AND SAY, THEREFORE, I THINK THESE
10 PARTICULAR PEOPLE DID, IN FACT, CONSPIRE.

11 BUT IF YOU BOTH WANT TO AGREE THAT EVERYBODY GETS TO
12 HAVE THEIR OPINION ON THAT, I GUESS THAT'S OKAY WITH ME. BUT
13 IT'S EITHER EVERYBODY OR NOBODY AND PREFERABLY NOBODY.

14 AND SO THE LITTLE EXCERPTS YOU GAVE ME FROM KALT'S
15 TESTIMONY, THE FIRST ONE WOULD BE AN EXAMPLE OF WHAT I WOULD
16 THINK WOULD NOT BE APPROPRIATE, WHICH IS SORT OF LIKE, I THINK
17 THESE PEOPLE DID NOT CONSPIRE. THE LATER ONES -- OR DID
18 CONSPIRE. THE LATER ONES WOULD -- ARE MORE LIKE, THESE ARE THE
19 FACTORS, AND THIS IS WHAT USUALLY HAPPENS AND THAT SORT OF
20 THING.

21 IPP'S MIL'S ARE ESSENTIALLY JOINED IN, BUT THEY HAVE
22 TWO OF THEIR OWN. ONE IS THEIR NO. 3, EXCLUDE REFERENCES TO
23 IP'S NOT PURCHASING ANY PRODUCT. AGAIN, THAT'S THE SAME AS THE
24 WESTELL RESULT. THE FACT THAT THEY DIDN'T IS NOT TABOO. IT
25 MIGHT COME IN FOR SOME REASON, BUT IT DOES NOT MEAN THAT THEY

1 AREN'T CLASS MEMBERS OR CAN'T REPRESENT THEIR CLASS. IT MAY
2 MEAN THEY DON'T HAVE DAMAGES, I GUESS.

3 NO. 8, EXCLUDE ARGUMENT RE: INADEQUACY OF CLASS REPS.
4 I WOULD SAY THAT'S GENERALLY TRUE. IT GENERALLY WOULD BE
5 GRANTED. THAT ISN'T A JURY QUESTION. THE ONLY EXCEPTION AGAIN
6 WOULD BE IF SOMEHOW THEY HAD SOME SORT OF PECUNIARY RELATIONSHIP
7 WITH PLAINTIFFS' COUNSEL THAT LED THEM TO HAVE SOME KIND OF
8 MOTIVATION TO BE UNTRUTHFUL BECAUSE THEN THEY WOULD GET TO BE
9 PLAINTIFFS AGAIN OR SOMETHING LIKE THAT. IF YOU HAD SOMETHING
10 LIKE THAT, I WOULD LOOK AT A PROFFER. BUT FAILING THAT, I
11 WOULDN'T SEE THAT AS RELEVANT.

12 CYPRESS' MOTIONS IN LIMINE NO. 1. WELL, THIS IS MY
13 THOUGHT ABOUT THE DRAM SITUATION. I WOULD -- I WOULD ALLOW THE
14 DRAM GUILTY PLEAS AND EVIDENCE ABOUT DRAM. AND I WOULD ALLOW IT
15 EVEN IN A JOINT TRIAL WITH CYPRESS, AND I WOULD GIVE A LIMITING
16 INSTRUCTION FOR CYPRESS, WHICH I BELIEVE WOULD BE EFFECTIVE.

17 ARGUABLY SOMETIMES IT MIGHT NOT BE, BUT IN THIS CASE
18 IT WOULD BE BECAUSE CYPRESS HAS A GREAT ARGUMENT. IT WOULD --
19 THE LIMITING INSTRUCTION COULD BE AS STRONG AS YOU CAN WRITE IT,
20 AND IT WOULD INCLUDE SUCH THINGS AS DURING THE TIME OF THIS DRAM
21 CONSPIRACY, CYPRESS DIDN'T EVEN PRODUCE DRAM.

22 SO CYPRESS, I THINK, IS ACTUALLY HELPED BY THE FACT
23 THAT THEIR CODEFENDANT PLED GUILTY AND THEY WEREN'T EVEN IN THE
24 MARKET. SO I JUST DON'T SEE ANY PREJUDICE TO CYPRESS FROM
25 HAVING THAT IN. ON THE OTHER HAND, I DO THINK IT'S RELEVANT TO

1 SRAM, GOING TOWARDS STATE OF MIND, INTENT, KNOWLEDGE,
2 UNDERSTANDING, PARTICIPATION, MARKET CONDITIONS, PARTICIPANTS,
3 ALL OF THOSE KINDS OF THINGS.

4 SO THAT'S MY THOUGHT ON THAT ONE.

5 NO. 2, EXCLUDE DISCOVERY FROM SETTLING DEFENDANTS.
6 IN TERMS OF SAMSUNG'S ANSWERS, ADMISSIONS, THAT SORT OF THING,
7 THOSE WOULD BE ADMITTED. THEY'RE AGAIN A LIMITING INSTRUCTION
8 THAT I THINK WOULD BE EFFECTIVE UNDER THESE CIRCUMSTANCES.

9 THE -- THE DISCOVERY EXCERPTS FROM CODEFENDANTS
10 WOULD, GENERALLY SPEAKING, BE HEARSAY AND WOULDN'T COME IN
11 AGAINST ANYBODY. THEY'RE -- SINCE THEIR DISCOVERY, THEY'RE
12 UNLIKELY TO BE WITHIN THE SCOPE AND FURTHERANCE OF THE
13 CONSPIRACY SO THEY'RE NOT 803 STATEMENTS. THEY'RE JUST
14 STATEMENTS THAT WOULD COME IN IF THEY WERE PARTIES.

15 THE ONLY EXCEPTION I WOULD SEE WOULD BE IF THERE ARE
16 ACTUALLY ADMISSIONS AGAINST INTEREST WHICH IS -- HAS SOME TEETH
17 TO IT.

18 ADMISSIONS AGAINST THEIR PECUNIARY OR PENAL INTEREST,
19 PERHAPS THOSE WOULD COME IN; BUT, OTHERWISE, THOSE THINGS
20 WOULDN'T COME IN.

21 NOW, YOU'RE SAYING THAT SOME OF THEM ARE PURELY
22 FACTUAL, JUST, YOU KNOW, HOUSE-CLEANING KINDS OF THINGS, WHO
23 WORKED FOR WHO AT WHAT TIME PERIOD, AND THAT SORT OF THING. I
24 SHOULD THINK YOU'D BE ABLE TO STIPULATE TO THINGS LIKE THAT. WE
25 WOULDN'T NEED TO PUT IN A DISCOVERY RESPONSE TO PROVE THAT JOHN

1 DOE WORKED FOR MICRON FROM X DATE TO Y DATE, AND HOPEFULLY YOU
2 COULD WORK THOSE THINGS OUT.

3 NO. 3, DISALLOW SPECIAL VERDICT APPORTIONING
4 SAMSUNG'S LIABILITY. I MUST SAY I HAVE NEVER HEARD OF THIS
5 NOTION ABOUT COOPERATING, GOING TO TRIAL, AND THEN HAVING A
6 BENEFIT AFTERWARDS. IT'S NOT HOW THEY DO IT ON THE CRIMINAL
7 SIDE. IF YOU COOPERATE, YOU DON'T GET TO GO TO TRIAL AND PLEAD
8 NOT GUILTY AND CONTEST THE CASE. BUT IF THAT'S HOW IT IS,
9 THAT'S HOW IT IS.

10 AND I TEND TO THINK THAT THERE MAY NOT BE A SEVENTH
11 AMENDMENT RIGHT THERE BECAUSE THE -- WHAT YOU HAVE A RIGHT TO
12 UNDER THE SEVENTH AMENDMENT IS ANTITRUST DAMAGES. IF YOU'RE
13 GETTING A LITTLE BENEFIT ON THE SIDE FROM THAT DEAL THAT YOU'VE
14 MADE WITH THE DEPARTMENT OF JUSTICE, I'M JUST NOT SURE THAT'S
15 THE SUBJECT OF THE SEVENTH AMENDMENT.

16 BUT IN AN ABUNDANCE OF CAUTION AND BECAUSE IT MIGHT
17 BE USEFUL FOR OTHER THINGS, I DON'T HAVE A PROBLEM WITH MAKING
18 THE JURY APPORTION SAMSUNG'S DAMAGE, AND IF THAT, THEN CYPRESS'
19 DAMAGES AS WELL IF ONLY SO IT DOESN'T LOOK ODD.

20 BUT IT MIGHT ALSO BE HELPFUL IN TERMS OF -- YOU KNOW,
21 WE MIGHT WANT TO HAVE THEM APPORTION EVERYBODY'S PARTICIPATION
22 SO THAT WE CAN DEAL WITH THIS APPORTIONMENT PROBLEM AND WITH THE
23 TREATMENT OF SETTLEMENT AMOUNTS PROBLEM.

24 EXCLUDE CUSTOMER/VENDOR RELATIONSHIPS.

25 OH, I'M SORRY. NO. 4, EXCLUDE EXPERT WITHIN THAT

1 SURPRISE INFLATION EVIDENCE IS CONSPIRACY. I THINK THAT'S
2 ADEQUATELY DISCLOSED, AND I THINK IT'S SORT OF COMMON-SENSE
3 INFERENCE THAT ONE COULD ARGUE. SO THAT, I WOULD NOT BE
4 INCLINED TO EXCLUDE.

5 NO. 5, EXCLUDE CUSTOMER/VENDOR RELATIONSHIPS. I
6 WOULD BE INCLINED TO DENY THAT, ALTHOUGH I'M JUST READING MY
7 NOTES AT THE MOMENT. I CAN'T REMEMBER WHAT THAT EVEN IS, BUT
8 WHEN I READ IT, I THOUGHT IT SHOULD BE DENIED.

9 SAMSUNG'S MOTIONS IN LIMINE, NO. 1 IS TO EXCLUDE THE
10 DRAM GUILTY PLEAS. AGAIN, I WOULD NOT EXCLUDE THOSE, OR THAT
11 WOULD BE MY INCLINATION.

12 NO. 2, EXCLUDE THE DRAM/SRAM INVESTIGATION. AND,
13 AGAIN, I'VE SAID THAT I WOULD BE INCLINED TO EXCLUDE THE SRAM
14 INVESTIGATION. SO THE ONLY UNCERTAINTY THERE IS THE LENIENCY
15 AGREEMENT AND WHETHER THAT IN ITSELF CONTAINS SOME SORT OF
16 IMPEACHMENT OR BIAS INFORMATION.

17 AND I WOULD BE WILLING TO LOOK AT THE LENIENCY
18 AGREEMENT AND SEE WHAT IT SAYS AND CONSIDER WHETHER THAT WOULD
19 BE ADMISSIBLE FOR SOME REASON.

20 NO. 3, EXCLUDE EVIDENCE OF DRAM CONDUCT. AGAIN, THAT
21 WOULD BE DENIED. I DON'T WANT WHOLE TRIAL TO BE ABOUT DRAM, BUT
22 TO THE EXTENT IT SHOWS A SIMILAR MO OR IS PROBATIVE OF INTENT OR
23 KNOWLEDGE OR PURPOSE, THEN SOME OF THAT WOULD COME IN.

24 NO. 4, EXCLUDE EVIDENCE OF CONDUCT OF OTHER NON-SRAM
25 PARTIES, I GUESS IT IS. THAT'S NOT OPPOSED AND WOULD BE

1 GRANTED.

2 NO. 5, EXCLUDE WHAT -- THE WAY THEY FRAME IT IS
3 EXCLUDE EVIDENCE CONTRARY TO LEVY'S OPINIONS. I DON'T THINK
4 THAT'S WHAT YOU REALLY MEAN. BUT PLAINTIFFS DON'T REALLY
5 ADDRESS IT HEAD ON. WHAT THEY'RE TRYING TO SAY IS TO EXCLUDE
6 EVIDENCE THAT THINGS THAT LEVY SAID DIDN'T HAPPEN, IN FACT, DID
7 HAPPEN.

8 IN OTHER WORDS, THEY DON'T WANT -- IF LEVY SAYS
9 THERE'S NO DAMAGE FROM PSRAM DURING THE DAMAGE PERIOD, THEN YOU
10 CAN'T COME IN WITH EVIDENCE THAT THERE IS, IS WHAT THEY'RE
11 TRYING TO SAY. AND YOU DIDN'T REALLY TAKE THAT ON HEAD ON, IN
12 MY VIEW, IN YOUR OPPOSITION, WHETHER YOU DIDN'T UNDERSTAND THAT
13 THAT WAS WHAT THEY WERE SAYING OR YOU DIDN'T HAVE A BETTER
14 ANSWER OR WHATEVER. BUT THAT, I THINK MAYBE I NEED TO HEAR FROM
15 THE PLAINTIFFS AGAIN ON BECAUSE IT WASN'T REALLY ADDRESSED.

16 NO. 6, EXCLUDE FOREIGN TRADE PURCHASES. WELL, THIS
17 GETS INTO THE FTAIA SUMMARY JUDGMENT MOTION WHICH I APOLOGIZE I
18 HAVE NOT BEEN ABLE TO GET OUT ALONG WITH THE PSRAM PORTION OF
19 ONE OF THE MOTIONS.

20 IF WE HAD TIME, I'M GOING TO TRY TO TELL YOU WHAT I'M
21 THINKING ABOUT THOSE. I HAVE A FEW QUESTIONS. I MIGHT EVEN
22 ENTERTAIN LIMITED ARGUMENT ON THOSE. BUT ALL I CAN SAY AS FAR
23 AS THE MOTION IN LIMINE WOULD BE THAT EVEN IF THOSE TRANSACTIONS
24 WERE NOT SUFFICIENT TO SUPPORT DAMAGE CLAIMS, THAT WOULDN'T
25 NECESSARILY MEAN THAT FOREIGN CONDUCT WAS INADMISSIBLE. THE

1 CONDUCT MIGHT WELL BE ADMISSIBLE TO THE EXTENT IT IS RELEVANT TO
2 WHAT HAPPENED OR PEOPLE'S INTENT FOR MOTIVATION OR SO ON.

3 NO. 7, EXCLUDE FAVORABLE TREATMENT BY SAMSUNG OF ITS
4 EMPLOYEES WHO WERE INVOLVED IN DRAM. I WOULD TEND TO DENY THAT.
5 THE ONLY THING I MIGHT EXCLUDE WOULD BE IF THEY PAID THE
6 ATTORNEYS' FEES OF THEIR EMPLOYEES. NOW, THAT'S -- SOMETIMES
7 COMES UP IN CASES WITH CORPORATIONS AND AT LEAST IN CALIFORNIA,
8 THERE'S ARGUMENT THAT CAN BE MADE, I BELIEVE, THAT THE
9 CORPORATION HAS TO PAY ITS EMPLOYEES ATTORNEYS' FEES, AND EVEN
10 THOUGH THAT MIGHT SEEM FISHY TO A JURY, IT'S NOT -- IT ISN'T
11 FISHY, AND THEY SHOULDN'T BE ALLOWED TO THINK THAT IT IS.

12 SO I WOULD POSSIBLY EXCLUDE EVIDENCE THAT THEIR
13 ATTORNEY'S FEES WERE PAID, BUT I THINK THAT I WOULD ALLOW
14 EVIDENCE THAT THEIR CONDUCT WAS PERHAPS ARGUABLY RATIFIED OR
15 REWARDED OR SOME SUCH THING IF THERE WAS EVIDENCE TO THAT
16 EFFECT.

17 NO. 8, EXCLUDE UNCERTIFIED TRANSLATIONS. WELL, ON
18 THE ONE HAND, IF WE'RE RELYING ON A TRANSLATION, WE NEED TO HAVE
19 IT BE RIGHT, SO WE NEED TO HAVE CERTIFIED TRANSLATIONS
20 AVAILABLE. BUT ON THE OTHER HAND, IF THE FACT OF AN ERRONEOUS
21 TRANSLATION IS ACTUALLY RELEVANT IN SOME WAY, THEN THAT WOULD
22 NOT BE EXCLUDED.

23 FOR EXAMPLE, IF SAMSUNG HAD MADE SOME TRANSLATION
24 WHICH WAS ACTUALLY WRONG BUT HELPED THEM SOMEHOW, AND THEY USED
25 IT, I COULD SEE THAT COMING IN.

1 AND THEN WE HAVE EXCLUDE STRICKEN EVIDENCE FROM
2 COMPLAINT. WELL, I'VE NEVER GIVEN A COMPLAINT TO A JURY. I'VE
3 NEVER READ A COMPLAINT TO A JURY. SO I THINK IT'S KIND OF MOOT
4 UNLESS YOU REALLY WANT TO GIVE THE JURY THE COMPLAINT.

5 AND IF YOU DID, THEN YES, WE WOULD HAVE A SORT OF
6 SANITIZED VERSION OF THE COMPLAINT THAT DOESN'T HAVE BIG BLACK
7 MARKS IN IT. WE'D MAKE IT LOOK LIKE IT WAS THE COMPLAINT,
8 BUT -- BUT MY GENERAL SOLUTION WOULD BE WE JUST DON'T GIVE
9 COMPLAINTS TO JURIES.

10 SO THOSE ARE MY THOUGHTS ON THE MOTIONS IN LIMINE.

11 THE VERDICT FORMS, WE CAN'T -- I MEAN, YOU'RE
12 OBVIOUSLY NOT IN A POSITION TO PROPOSE VERDICT FORMS WITHOUT
13 KNOWING WHAT WILL BE SUBMITTED TO THE JURY, SO I DON'T THINK
14 THERE'S MUCH POINT IN TALKING ABOUT THOSE AT THIS TIME.

15 AND THE SAME GOES TO SOME DEGREE FOR THE
16 INSTRUCTIONS, ALTHOUGH I WILL GIVE YOU SOME GENERAL THOUGHTS
17 THAT I HAVE ABOUT YOUR PROPOSED INSTRUCTIONS. AND THOSE ARE
18 THAT I'D LIKE FOR YOU TO GO BACK TO THE DRAWING BOARD AND
19 NEGOTIATE THEM.

20 NUMBER ONE, IF THERE'S A NINTH CIRCUIT MODEL
21 INSTRUCTION ON POINT, I WILL GIVE IT. AND I WILL NOT MODIFY IT
22 UNLESS THERE'S SOME REALLY GOOD REASON TO MODIFY IT, LIKE A
23 SUBSEQUENT CASE HAS SAID IT'S REVERSIBLE ERROR IN THE NINTH
24 CIRCUIT.

25 I GATHER THE NINTH CIRCUIT DOESN'T HAVE ANY ANTITRUST

1 INSTRUCTIONS. AND FROM WHAT I'VE READ, IT SOUNDED TO ME LIKE
2 THE ABA ONES WERE PRETTY GOOD, SO I WOULD SAY IF THERE'S NO
3 NINTH CIRCUIT INSTRUCTION, I WOULD BE INCLINED TO USE THE ABA
4 INSTRUCTION AS IS WITHOUT ANY CHANGES EITHER TO ADD OR TO
5 SUBTRACT UNLESS THERE WAS AN ACTUAL CASE THAT SAID THIS WOULD BE
6 REVERSIBLE ERROR.

7 THE -- I DON'T KNOW ABOUT -- THE NINTH CIRCUIT MIGHT
8 HAVE SOME CONSPIRACY INSTRUCTIONS, BUT MAYBE THOSE AREN'T REALLY
9 FOCUSED ENOUGH ON ANTITRUST CONSPIRACY TO BE USABLE.

10 THE INSTRUCTIONS NEED TO BE AS SHORT AS THEY CAN BE.
11 THEY NEED TO BE IN VERY SIMPLE LANGUAGE. THINK POSTAL WORKERS,
12 PEOPLE WHOSE ENGLISH IS THEIR SECOND LANGUAGE. YOU KNOW, NO
13 FIVE-SYLLABLE WORDS, NO TERMS OF ART, NOTHING IN LATIN.

14 IT MAY NOT BE REPETITIVE. I DON'T WANT TO BE READING
15 THE SAME THING OVER AND OVER AGAIN. IT MAY NOT ARGUMENTATIVE.
16 YOU NEED TO NEGOTIATE THESE THINGS OUT AND COMPETE WITH EACH
17 OTHER AS TO WHO CAN WRITE THE MOST NEUTRAL STATEMENT OF LAW, NOT
18 WHO CAN SQUEEZE IN THE MOST ARGUMENT FOR THEIR CASE IN THE
19 COURSE OF THE INSTRUCTION, BECAUSE I'M JUST NOT GOING TO GIVE
20 INSTRUCTIONS LIKE THAT. SO THINK NEUTRALITY AND COME UP WITH
21 THINGS THAT -- THAT SEEM TO BE NEUTRAL STATEMENTS OF THE LAW.

22 JUST BECAUSE SOME CASE SAID IT AND YOU LIKE IT,
23 SOUNDS GOOD, AND IT'S SOMETHING YOU'D WANT TO SAY IN YOUR
24 CLOSING ARGUMENT DOESN'T MEAN IT'S GOING TO BE IN THE JURY
25 INSTRUCTION. SO DON'T BE SPENDING A LOT OF TIME WRITING LONG

1 BRIEFS ABOUT HOW THIS PHRASE THAT YOU LIKE SHOULD BE IN THERE
2 BECAUSE SOME CASE SAID IT AND --

3 NOW, SOMEBODY SAID I SHOULDN'T BE GIVING ANY
4 SUBSTANTIVE INSTRUCTIONS IN THE PRELIMINARY INSTRUCTIONS. I
5 ACTUALLY NOWADAYS GIVE ALMOST ALL THE SUBSTANTIVE INSTRUCTIONS
6 AT THE BEGINNING. I FIND THAT JURIES UNDERSTAND THINGS A LOT
7 MORE THAN TRYING LISTEN TO THE WHOLE CASE NOT EVEN KNOWING WHAT
8 IT IS THEY'RE GOING TO BE DECIDING OR WHY ANY OF THIS STUFF EVEN
9 MATTERS.

10 SO WHAT I DO NOW IS GIVE AS MUCH AS I POSSIBLY CAN AT
11 THE BEGINNING. IF SOME -- AND I TELL THEM, YOU KNOW, THIS IS A
12 PRELIMINARY VERSION. THE FINAL VERSION MAY DIFFER. THROW AWAY
13 THE PRELIMINARY VERSION. DON'T CONCERN YOURSELF WITH ANY
14 DIFFERENCES. SO IF IT TURNS OUT WE DO HAVE TO CHANGE SOMETHING
15 LATER, WE JUST CHANGE IT. BUT THEY UNDERSTAND A LOT MORE WHAT'S
16 GOING ON. SO WE WILL TRY TO HAVE AS MUCH AS WE CAN IN THE
17 PRELIMINARY INSTRUCTIONS.

18 WE -- I DON'T WANT THE INSTRUCTIONS TO COMMENT ON THE
19 EVIDENCE OR TO SORT OF REHASH THE EVIDENCE. NUMBER ONE, YOU'LL
20 NEVER BE ABLE TO AGREE ON THOSE. EVERYBODY WILL WANT TO WRITE
21 IT UP IN THEIR OWN WAY. AND NUMBER TWO, THAT'S JUST NOT THE
22 ROLE OF INSTRUCTION. SO YOU MIGHT HAVE TO REFER TO THE EVIDENCE
23 IN ORDER SIMPLY TO SAY WHY YOU'RE TELLING ME THIS. YOU KNOW,
24 BOTH SIDES CALLED EXPERTS, SO HERE'S HOW YOU JUDGE EXPERT
25 TESTIMONY, THAT SORT OF THING. BUT WE WOULDN'T BE HAVING

1 LANGUAGE PARAGRAPHS SAYING WHAT ONE EXPERT SAID AND WHAT THE
2 OTHER EXPERT SAID.

3 IF YOU ARE -- WELL, WHEN YOU GIVE ME YOUR NEXT
4 VERSION -- AND ASSUMING YOU ARE USING LARGELY NINTH CIRCUIT AND
5 ABA INSTRUCTIONS BUT YOU'RE MODIFYING THEM TO SOME DEGREE, WHAT
6 I'D LIKE IS A REDLINE VERSION THAT TELLS ME EXACTLY WHERE YOU
7 MODIFIED IT, WHAT WAS TAKEN OUT, WHAT WAS ADDED IN SO I CAN
8 JUDGE WHETHER I WANT TO DO IT OR NOT.

9 IN THIS VERSION I GOT, WE WENT THROUGH THE WHOLE
10 CONSPIRACY ABOUT THE DP'S, AND THEN WE WENT AGAIN AND DID IT ALL
11 OVER AGAIN WITH THE IPP'S. MAYBE YOU DIDN'T MEAN THAT, BUT IN
12 ANY EVENT, WE WOULDN'T DO THAT. IF WE TRY THE CONSPIRACY
13 TOGETHER WITH BOTH, WE GIVE ONLY ONE SET OF INSTRUCTIONS.

14 AND I WOULDN'T IMAGINE THE JURY WOULD EVEN
15 PARTICULARLY HAVE TO KNOW ANYTHING ABOUT THE DIFFERENCE BETWEEN
16 DP'S AND IP'S OR HAVE ANY -- CONCERN THEMSELVES WITH THAT.

17 THE -- WELL, I WOULDN'T MIND TALKING A LITTLE BIT
18 ABOUT THE PSRAM ISSUE AND THE FOREIGN TRADE ISSUE, BUT MAYBE
19 WHAT I SHOULD DO BEFORE TURNING TO THAT WOULD BE TO ASK ANY OF
20 YOU TO TELL ME WHAT PORTIONS OF WHAT I SAID SO FAR YOU AGREE
21 WITH AND WHAT PORTIONS YOU FEEL COMPELLED TO ARGUE.

22 **MR. MCGINNIS:** YOUR HONOR, LET ME ADDRESS WHAT I
23 THINK IS PERHAPS MOST PRESSING. WHICH IS HOW WE'RE GOING TO TRY
24 THIS CASE. AND I HAVE TO SAY THAT I THINK THE WAY THAT THE
25 COURT IS THINKING ABOUT BIFURCATING THIS IS THE ROAD TO RUIN AND

1 THE ROAD TO UNNECESSARY APPELLATE ISSUES. AND I'LL TELL YOU
2 WHY.

3 THE PLAINTIFFS -- AND I STUDIED THEIR WITNESS LIST --
4 HAVE 32 FACT WITNESSES. PUTTING ASIDE THOSE THAT HAVE STARS ON
5 THEM THAT ARE CUSTODIANS OR WHATEVER, THEY HAVE 32 WITNESSES.
6 AND I ASSUME THAT THESE ARE PUT IN THERE IN GOOD FAITH AND
7 THAT'S WHAT THEY FEEL THEY NEED TO PROVE THE CASE.

8 WE OURSELVES HAVE ANOTHER DOZEN TO 18, AND I CAN TELL
9 YOU THAT EVERY ONE OF THOSE WITNESSES IS GOING TO TESTIFY IN A
10 PHASE ABOUT LIABILITY. I HAVE YET TO HEAR THE PLAINTIFFS SAY
11 ANYTHING ABOUT, WELL, THIS MEANS THAT WE CAN CUT DOWN SOME OF
12 OUR WITNESSES. THIS WITNESS DOESN'T NEED TO TESTIFY, THAT
13 WITNESS DOESN'T NEED TO TESTIFY.

14 **THE COURT:** WELL, AS FAR AS THE DP'S GO, THEY WOULD
15 BE TRYING THEIR WHOLE CASE AT ONCE.

16 **MR. McGINNIS:** OKAY.

17 **THE COURT:** THEY WOULD BE DOING LIABILITY FIRST, THEN
18 IP'S WOULD GO AWAY, AND THE DP'S WOULD FINISH UP THEIR CASE. SO
19 AS FAR AS THEIR CASE WENT, IT WOULD BE TRIED ALL AT ONCE.

20 **MR. McGINNIS:** ALL RIGHT. THEN I MUST HAVE
21 MISUNDERSTOOD YOUR HONOR BECAUSE I THOUGHT YOU WERE TALKING
22 ABOUT PHASING THE VERDICT ABOUT LIABILITY BEFORE A VERDICT --
23 BEFORE CONTINUING WITH IMPACTED DAMAGES.

24 **THE COURT:** OH, WELL --

25 **MR. McGINNIS:** BECAUSE IF -- IF -- IF THE JURY IS TO

1 REACH A VERDICT -- A SINGLE VERDICT ABOUT WHETHER THERE IS
2 LIABILITY OR NOT, ALL OF OUR WITNESSES' TESTIMONY BUT FOR A
3 COUPLE HOURS OF DR. RUBINFELD WOULD TESTIFY, AND I BELIEVE ALL
4 OF THEIRS WOULD COME IN, TOO.

5 SO I SEE NO SAVING OF TIME THAT WAY WHATSOEVER.

6 AND --

7 **THE COURT:** WELL, IT SAVES HAVING TO DO ALL THE
8 DAMAGES FOR DP'S AT THE SAME TIME AS -- FOR THE IP'S AT THE SAME
9 TIME AS THE DP'S.

10 **MR. MCGINNIS:** I SUPPOSE THAT WOULD -- I SUPPOSE IT
11 WOULD SAVE THAT, YOUR HONOR. BUT UNLESS THE COURT HAS
12 ESSENTIALLY AGREED WITH OUR SECOND PREFERENCE, WHICH WAS WE WILL
13 TRY THE DIRECT PURCHASER CASES FROM START TO FINISH, LIABILITY
14 THROUGH DAMAGES, THE JURY GETS A SPECIAL VERDICT FORM WHICH HAS
15 ALL OF THOSE QUESTIONS ON IT, THEN THERE'S A REAL PROBLEM.

16 BUT IF WHAT THE COURT HAS IN MIND IS -- JUST TO BE
17 REAL SPECIFIC ABOUT THIS, IF THE JURY GETS A SPECIAL VERDICT
18 FORM THAT HAS ALL THE QUESTIONS ABOUT LIABILITY AND IMPACT
19 DAMAGES AND THOSE SORTS OF THINGS, I THINK WE CAN LIVE WITH
20 THAT.

21 WHAT WE CAN'T LIVE WITH IS SIMPLY A PHASE WHERE THE
22 JURY ADDRESSES LIABILITY ONLY. AND I CAN'T SEE IT SAVES ANY
23 TIME, AND I SEE THAT IT CAUSES CONFUSION.

24 **THE COURT:** YEAH, I ACTUALLY HADN'T THOUGHT ABOUT
25 WHETHER WE WOULD HAVE THE JURY RETURN THE VERDICT ON LIABILITY

1 BEFORE WE WENT ON TO THE DP'S DAMAGES. I GUESS WE PROBABLY
2 WOULD BECAUSE THE IP'S WOULD WANT TO LEAVE AT THAT POINT, SO I
3 THINK --

4 **MR. MCGINNIS:** I THINK --

5 **THE COURT:** -- YOU'RE RIGHT, THAT WE WOULD -- THAT
6 THE JURY WOULD -- AS IN A SORT OF TYPICAL LIABILITY, SLASH,
7 DAMAGES BIFURCATION, THE JURY WOULD RETURN A VERDICT ON
8 LIABILITY, BUT ASSUMING IT WAS NOT A DEFENSE VERDICT, THEY WOULD
9 THEN GO ON TO DO DAMAGES BUT ONLY FOR DP'S.

10 **MR. MCGINNIS:** WELL, ASSUMING ALL OF THAT IS ON --
11 ALL OF THE DIRECT PURCHASERS' QUESTIONS ARE ON THE VERDICT FORM
12 THAT THE JURY IS LOOKING AT, THEN I THINK THAT'S OUR SECOND
13 SUGGESTION, WHICH WOULD BE -- WHICH WOULD PROBABLY BE OKAY,
14 ALTHOUGH IT'S NOT -- WASN'T OUR FIRST CHOICE.

15 BUT OTHERWISE, I THINK THAT IF THERE'S SOME ISSUE
16 ABOUT EVIDENCE COMING IN ON THE ISSUE OF LIABILITY THAT'S NOT
17 RELEVANT TO SOME OTHER THING, THAT'S -- THAT'S A BIG PROBLEM
18 BECAUSE I CAN TELL YOU THAT WE BELIEVE 95 PERCENT OF OUR
19 EVIDENCE SHOULD COME IN ON THE ISSUE OF LIABILITY. AND I'VE
20 LOOKED AT ALL THE WITNESSES THAT DON'T HAVE STARS ON THEM AND
21 TRIED TO COME UP WITH A -- AN IDEA OF WHAT TRIAL TIME WOULD BE
22 AND I THINK FROM WHAT SAMSUNG NEEDS, WE'RE TALKING ABOUT ROUGHLY
23 15 TRIAL DAYS.

24 SO IF WE'RE GOING FROM START TO FINISH ON SAMSUNG AND
25 ALL THE ISSUES, AND THEN THE INDIRECT PURCHASERS WILL -- WILL

1 WAIT AND SEE WHAT HAPPENS WITH THEM, I'M NOT SURE THAT'S THE
2 MOST EFFICIENT WAY TO DO IT. BUT THAT'S -- THAT WAS OUR OPTION
3 NUMBER TWO, AND I THINK WE COULD LIVE WITH THAT.

4 **THE COURT:** WELL, YOUR OPTION NUMBER TWO HAD NO IP
5 STUFF IN THE FIRST TRIAL, AS I UNDERSTOOD IT. THE FIRST TRIAL
6 WOULD BE ALL DP, AND THEN THE SECOND TRIAL WOULD HAVE TO START
7 OVER AGAIN WITH CONSPIRACY FOR THE IP'S. AND THAT SEEMED
8 WASTEFUL TO ME TO TRY TO PROVE UP THE CONSPIRACY TWICE OR 25
9 TIMES.

10 **MR. MCGINNIS:** WELL, I'M NOT SURE IF I CAN SPEAK TO
11 WHAT HAPPENS WITH THE IP'S BECAUSE WE'VE SETTLED WITH THEM. I
12 CAN ONLY SPEAK TO HOW WE WANT OUR CASE TRIED, AND THAT WOULD BE
13 FROM START TO FINISH, WHICH SOUNDS LIKE WHAT THE COURT HAS IN
14 MIND.

15 **THE COURT:** OKAY. ANYBODY ELSE -- WELL, DO YOU
16 WANT -- WHAT SHALL WE DO? DO YOU WANT TO LET HIM TALK ABOUT
17 EVERYTHING AND THEN EACH OF YOU TALK ABOUT EVERYTHING OR --

18 **MR. COTCHETT:** I THINK WE OUGHT TO DIVIDE IT UP BY
19 SUBJECT MATTER. IT WOULD BE EASIER JUST TO GET IT RIGHT OUT OF
20 THE WAY.

21 **THE COURT:** OKAY.

22 **MR. CONNELLY:** IF I MAY, I WON'T STEP ON YOUR LINES,
23 BUT I MEAN, CYPRESS HAS SOMETHING TO SAY JUST ABOUT THIS ISSUE,
24 BUT I'LL BE HAPPY TO FOLLOW YOU --

25 **THE COURT:** GO AHEAD ON THE BIFURCATION ISSUE.

1 **THE REPORTER:** COULD YOU STATE YOUR APPEARANCE,
2 PLEASE.

3 **MR. CONNELLY:** VINCENT CONNELLY ON BEHALF OF CYPRESS.
4 JUDGE, LET ME SAY -- AND OVERALL, YOUR GIVING US
5 THESE TENTATIVE RULINGS IS ENORMOUSLY HELPFUL BECAUSE IT PUTS
6 THE BURDEN ON THE REST OF US NOW, THE PARTIES OF THE CASE, TO BE
7 ADULT AND TO BE, YOU KNOW, SENSIBLE ABOUT SEEING WHETHER OR NOT
8 THERE'S FURTHER MIDDLE GROUND THAT WE CAN BRING TO THE COURT'S
9 ATTENTION. SO, OBVIOUSLY, THAT'S A TASK THAT HOPEFULLY WILL
10 MAKE FOR A MORE EFFICIENT TRIAL.

11 THE ONLY MAJOR CONCERN THAT WE HAVE IN WHAT YOU'VE
12 TENTATIVELY TOLD US IS YOUR PREFERENCE IS ON THE QUESTION OF
13 BIFURCATION. BUT FOR DIFFERENT REASONS, ALTHOUGH I'D HAVE TO GO
14 INTO THE WEEDS OF THE DETAILS AND WHY IT -- IT'S HARMFUL TO
15 CYPRESS'S POINT OF VIEW TO GET TO WHERE THE COURT PRESENTLY HAS
16 THE CASE SET UP.

17 CYPRESS WOULD MUCH PREFER THAT, AS A MATTER OF
18 SIMPLIFYING THE CASE, TO HAVE THE CASE ALL IN WITH THE DIRECT
19 PURCHASERS, BOTH LIABILITY AND DAMAGES ONLY WITH THE DIRECT
20 PURCHASERS. WE THINK -- MAY NOT BE PERSUASIVE TO THE
21 PLAINTIFFS, BUT WE THINK THAT THAT WOULD START THE CASE OUT IN
22 THE MOST EFFICIENT MANNER AND THE FAIREST MANNER IN TERMS OF
23 AVOIDING SOME OF THE COLLATERAL ISSUES THAT I THINK ARE REALLY
24 GOING TO BE THORNY IF WE ONLY GO TO LIABILITY BECAUSE THERE'S
25 GOING TO BE HUGE DIFFERENCES OF OPINION ABOUT EXACTLY HOW MUCH

1 INFORMATION SHOULD BE BROUGHT TO BEAR TO THE JURY IF IT'S ONLY
2 THAT.

3 **THE COURT:** RIGHT, BUT LET ME JUST INTERRUPT YOU.

4 SO YOU'RE SAYING DO THE ENTIRE IP CASE, INCLUDING ALL
5 25 STATES --

6 (SIMULTANEOUS COLLOQUY.)

7 **MR. CONNELLY:** I MAY HAVE MISSPOKEN. DO THE ENTIRE
8 DIRECT PURCHASER CASE.

9 **THE COURT:** OH, THAT IS -- THAT'S MY IDEA.

10 **MR. CONNELLY:** BUT NOT WAY -- WELL, THE WAY -- AS I
11 UNDERSTOOD WHAT THE COURT -- WHERE THE COURT WAS LEANING WAS
12 LET'S DO BOTH DIRECT AND INDIRECT, BUT LET'S JUST DO LIABILITY,
13 AND THEN WE'LL START PARSING IT OUT.

14 **THE COURT:** WELL, JUST DO CONSPIRACY REALLY, 'CAUSE
15 IMPACT IS PART OF LIABILITY.

16 (SIMULTANEOUS COLLOQUY.)

17 **MR. CONNELLY:** MY FAULT FOR -- SOMETIMES I THINK WE
18 TEND TO TOSS THOSE TERMS AROUND SYNONYMOUSLY, AND I APPRECIATE
19 THAT THEY'RE NOT QUITE THE SAME.

20 I'M SUGGESTING, THOUGH, THAT IT WOULD BE, I THINK,
21 MORE EFFICIENT TO DO THE ENTIRE CASE, ONLY THE DIRECT PURCHASER
22 CASE, BOTH LIABILITY AND DAMAGES IN THAT CASE. AND THEN LET
23 THE -- LET THE INDIRECT PURCHASERS AND THE -- AND WHATEVER
24 REMAINS OF THE CASE SORT IT OUT AFTERWARDS.

25 **THE COURT:** I'M NOT SURE WE'RE -- I'M NOT SURE WHAT

1 YOU'RE SAYING. MY IDEA IS TO DO CONSPIRACY FOR IP'S AND DP'S
2 FIRST.

3 MR. CONNELLY: RIGHT.

4 THE COURT: REACH A VERDICT ON THAT.

5 MR. CONNELLY: I UNDERSTAND.

6 THE COURT: SEND THE IP'S HOME.

7 MR. CONNELLY: YES.

8 THE COURT: AND THEN GO ON TO IMPACT AND DAMAGES FOR
9 THE DP'S ONLY. AND THEN AFTER THAT, BRING THE IP'S BACK AND TRY
10 IMPACT AND DAMAGES AND A SERIES OF TRIALS WITH THE IP'S.

11 WHAT ARE YOU SAYING?

12 MR. CONNELLY: I APPLAUD THE CONCEPT. I DON'T THINK
13 ANYONE WOULD DEBATE THE CONCEPT. IT'S VERY IMPORTANT FOR
14 EVERYBODY TO FOCUS ON HOW CAN WE DIVIDE THE CASE INTO A
15 MANAGEABLE, LOGICAL, SEQUENTIAL FASHION THAT YET AT THE SAME
16 TIME, YOU KNOW, MAKES IT MANAGEABLE.

17 THE COURT: SO IS THERE SOME PART OF THAT THAT YOU
18 DISAGREE WITH?

19 MR. CONNELLY: YES.

20 THE COURT: WHICH PART IS IT?

21 MR. CONNELLY: NOT HAVING BOTH OF THE PLAINTIFFS IN
22 THE CASE, IN THE INITIAL CASE.

23 THE COURT: THEY BOTH ARE.

24 MR. CONNELLY: UNDERSTOOD. I UNDERSTAND, BUT I'M
25 SAYING, BUT A BETTER --

1 **THE COURT:** OH, YOU --

2 (SIMULTANEOUS COLLOQUY.)

3 **THE COURT:** -- NOT THAT WAY.

4 **MR. CONNELLY:** CORRECT.

5 **THE COURT:** YOU WANT THEM NOT TO BE THERE.

6 (SIMULTANEOUS COLLOQUY.)

7 **THE COURT:** YOU WANT TO TRY THE WHOLE DP CASE WITHOUT
8 ANY IP'S AT ALL.

9 **MR. CONNELLY:** THAT'S CORRECT.

10 **THE COURT:** I CAN'T IMAGINE WHY YOU'D WANT THAT.
11 YOU'D HAVE TO HAVE YOUR CONSPIRACY TRIAL TWICE, AT LEAST TWICE.

12 (SIMULTANEOUS COLLOQUY.)

13 **MR. CONNELLY:** I DON'T PRETEND TO HAVE A CRYSTAL BALL
14 THAT'S ANYWHERE CLOSE TO GUARANTEE. I JUST THINK BY THE NATURE
15 OF, AT LEAST HISTORICALLY, DIRECT PURCHASER/INDIRECT PURCHASER
16 LITIGATION AND WHETHER OR NOT IT'S SENSIBLE TO GO WITH BOTH AS
17 OPPOSED TO ONE, THAT THE INDIRECT PURCHASE CASES TEND TO SORT
18 THEMSELVES OUT ONCE THE WRITING IS ON THE CHALKBOARD, YOU KNOW,
19 FROM THE DIRECT PURCHASER CASE.

20 **THE COURT:** YOU KNOW, I'VE JUST NEVER TRIED ONE, SO
21 I -- IF YOU PROMISE --

22 (SIMULTANEOUS COLLOQUY.)

23 **THE COURT:** THINK ABOUT IT. BUT --

24 (SIMULTANEOUS COLLOQUY.)

25 **THE COURT:** AND I MIGHT HAVE TO TRY THE CONSPIRACY

1 TWICE. I DON'T WANT TO DO THAT.

2 **MR. CONNELLY:** WE'RE HAVING A DIFFICULT TIME. THE
3 OTHER -- THE GENTLEMAN AT THE OTHER TABLE MAY HAVE BEEN ABLE TO
4 FIND IT. WE CAN'T FIND PRACTICAL EXAMPLES OF BOTH DIRECT AND
5 INDIRECT PURCHASERS GOING INTO THE SAME TRIAL, AND I SUSPECT
6 THERE'S A REASON FOR THAT.

7 **THE COURT:** MAYBE NOBODY EVER TRIED IT, BUT IT'S A
8 REALLY GREAT IDEA.

9 **MR. CONNELLY:** WELL, THAT -- AS I SAY, THAT'S OUR
10 STRONG PREFERENCE. I'LL GIVE THE PLAINTIFFS AN OPPORTUNITY TO
11 LET YOU KNOW WHETHER THEY AGREE OR DISAGREE OR WANT TO PUT A
12 VARIATION ON THAT.

13 **THE COURT:** OKAY. IT'S YOUR PREFERENCE, BUT I GATHER
14 YOU DON'T HAVE ANY ACTUAL LEGAL ARGUMENT AGAINST IT OR ANY --

15 **MR. CONNELLY:** NO, WE'LL GET INTO THE WEEDS OF -- IF
16 WE GO WITH THE JUDGE'S -- WITH YOUR CURRENT PLAN, OUR PROBLEM
17 WILL BE IN TERMS OF HOW MUCH THE EVIDENCE PLAINTIFF THINKS THEY
18 CAN PUT IN IN ANY KIND OF A -- IN A BACK-DOOR WAY ABOUT DAMAGES
19 BECAUSE THEY NEED THAT INFORMATION TO PROP UP THEIR LIABILITY
20 EXPERT.

21 WE SAY THAT'S JUST NOT FAIR. IF YOU'RE GOING TO PROP
22 UP YOUR LIABILITY EXPERT WITH THE FOUNDATION OF DAMAGE EXPERT
23 INFORMATION, THEN WE'VE GOT TO BRING OUR DAMAGE GUY IN TO
24 CONTEST IT, AND WE MIGHT AS WELL DO THE WHOLE THING AT ONCE.

25 **THE COURT:** OKAY.

1 **MR. MICHELETTI:** THANK YOU, YOUR HONOR. CHRIS
2 MICHELETTI ON BEHALF OF THE INDIRECT PURCHASERS. WE AGREE WITH
3 AND SUPPORT THE PROPOSAL THAT YOU'VE MADE. WE THINK IT'S THE
4 MOST EFFICIENT ROUTE TO TAKE.

5 THE SUGGESTION THAT MR. CONNELLY JUST MADE, I
6 BELIEVE, ONE PROBLEM WITH THAT, IF -- IF SAMSUNG AND CYPRESS GO
7 FORWARD TOGETHER WITH JUST THE DIRECT PURCHASERS, IF FOR SOME
8 REASON CYPRESS FALLS OUT OF THAT CASE, THEN WE DO NOT HAVE ANY
9 COLLATERAL ESTOPPEL IN THAT CASE. SO IT'S VERY IMPORTANT THAT
10 WE BE IN THERE AND TRYING THE CASE AGAINST BOTH OF THEM.

11 AND I DO THINK THAT WITNESS-WISE IT IS THE MOST
12 EFFICIENT APPROACH. I'VE -- I DON'T KNOW EXACTLY HOW SAMSUNG
13 PLANS ON PRESENTING ITS CASE, BUT IT SEEMS TO ME JUST LOOKING AT
14 THE -- AT THE EXPERTS THAT THE DEFENDANTS HAVE, THAT THERE'S A
15 VERY NEAT DIVIDING LINE BETWEEN CONSPIRACY ON THE ONE HAND AND
16 IMPACT AND DAMAGES ON THE OTHER HAND.

17 THEY HAVE SEPARATE -- CYPRESS HAS SEPARATE EXPERTS.
18 ONE THAT DEALS WITH -- WITH CONSPIRACY AND ANOTHER THAT DEALS
19 WITH IMPACT AND DAMAGES. SO I THINK THERE'S A VERY NEAT
20 DIVIDING LINE AND THAT WOULD BE THE MOST EFFICIENT.

21 **THE COURT:** THAT DOES LEAVE OPEN -- AND THIS WOULD BE
22 SOMETHING THAT ONLY CYPRESS WOULD CARE ABOUT -- CYPRESS AND THE
23 IP'S, IS HOW WE WOULD THEN DEAL WITH ALL OF THE IP CASES AFTER
24 THAT, WHETHER WE WOULD SEND SOME BACK, WHETHER WE WOULD HAVE A
25 BELLWETHER, WHETHER WE WOULD DIVIDE THE STATES UP IN GROUPS OF

1 FIVE OR -- OR WHAT WE WOULD DO. I SUPPOSE WE DON'T NEED TO
2 DECIDE THAT NOW, BUT --

3 **MR. MICHELETTI:** WE DON'T, BUT I CAN PREVIEW THAT. I
4 THINK WE HAVE BEEN WORKING WITH CYPRESS IN AN EFFORT TO
5 STREAMLINE THE JURY INSTRUCTIONS IN A WAY THAT WILL SIMPLIFY THE
6 PRESENTATION OF -- AND THE DETERMINATION OF BOTH -- BOTH
7 CONSPIRACY AND IMPACT AND DAMAGES FOR ALL THE STATES.

8 I MEAN, QUITE FRANKLY, I'M JUST NOT SURE THERE'S A
9 WHOLE LOT OF DIFFERENCE BETWEEN THEM, BETWEEN THE STANDARDS OF
10 THE STATES. AND THEY COULD VERY WELL BE PRESENTED ASSUMING THAT
11 IT'S AGREED TO, AND I THINK IT IS. I THINK THEY WANT THAT AND
12 HAVE INDICATED THAT IN THEIR PROPOSED JURY INSTRUCTIONS TO
13 DATE -- THAT WE CAN PRESENT PRETTY STREAMLINED, SIMPLIFIED JURY
14 INSTRUCTIONS THAT WOULD COVER THE VAST MAJORITY, IF NOT ALL THE
15 STATES. TO THE EXTENT IT DOES NOT COVER SOME OF THEM, IT MAY
16 SIMPLY BECAUSE THEY'RE EQUITABLE CLAIMS THAT YOUR HONOR WOULD
17 DECIDE.

18 **THE COURT:** WHAT DOES CYPRESS THINK JUST BRIEFLY
19 ABOUT HOW -- IF WE DID IT THE WAY I'M SUGGESTING, HOW WE WOULD
20 GO ABOUT DEALING WITH IP IMPACT AND DAMAGE CLAIMS AFTERWARDS?

21 **MR. CONNELLY:** YEAH, I DON'T THINK, JUDGE -- AND
22 MAYBE I MISUNDERSTAND, BUT I DON'T THINK IT'S PERMISSIBLE UNDER
23 THAT -- UNDER THAT SCHEME TO SEND DAMAGES OFF TO OTHER JURIES
24 IF -- IF THE JURY HERE HAS MADE THE DETERMINATION ON CONSPIRACY.

25 **THE COURT:** OH, YOU CAN.

1 YOU CAN BIFURCATE DAMAGES AND LIABILITY AND HAVE A
2 SEPARATE JURY DO THE DAMAGES.

3 **MR. CONNELLY:** AND YOU'D SEND -- THEN YOU'D SEND
4 THOSE CASES OFF ALL DOWNSTREAM TO WHATEVER STATE COURSES ARE
5 NECESSARY AS WELL AS WHATEVER THIS COURT --

6 (SIMULTANEOUS COLLOQUY.)

7 **THE COURT:** WELL, I WOULD -- THAT'S WHAT I'M ASKING.

8 **MR. CONNELLY:** OKAY.

9 **THE COURT:** I WOULD CONCEIVABLY DO THEM ALL MYSELF OR
10 I MIGHT SEND THEM BACK JUST BECAUSE IT'S TOO MUCH TO DO MYSELF.
11 I DON'T THINK I CAN SEND THEM TO STATE COURT. I THINK I HAVE TO
12 SEND THEM TO FEDERAL COURT. BUT I'D SEND -- I'D BE OPEN TO
13 SENDING THEM SOMEWHERE IF I COULD GET ANYWHERE TO TAKE THEM.

14 **MR. WINTERS:** GARY WINTERS ON BEHALF OF CYPRESS. I
15 THINK WHAT WE'RE SAYING IS UNDER THE LEXECON DECISION, WHICH IS
16 THE DECISION --

17 **THE COURT:** I'M FAMILIAR WITH LEXECON.

18 **MR. WINTERS:** OKAY. I THINK UNDER LEXECON, YOU'VE
19 GOT TO TAKE THE ENTIRE CASE AND SEND THE ENTIRE CASE BACK. YOU
20 CAN'T TRY THE CONSPIRACY FOR A KANSAS CLASS OR A MASSACHUSETTS
21 CLASS HERE IN CALIFORNIA AND THEN SEND THE DAMAGES CLAIM BACK.
22 I THINK THAT'S WHAT WE'RE SAYING, IS LEXECON REQUIRES THAT
23 ENTIRE CASE TO GO BACK TO THE ORIGINAL DISTRICT.

24 **THE COURT:** I DON'T AGREE THAT IT REQUIRES THE ENTIRE
25 CASE.

1 IF YOU'RE SAYING THAT LEXECON SOMEHOW AFFECTS
2 BIFURCATION --

3 **MR. WINTERS:** NO, I THINK --

4 **THE COURT:** -- I'M NOT FAMILIAR WITH THAT, BUT AS I
5 MENTIONED WHEN I FIRST STARTED, LEXECON -- THE POINT OF LEXECON
6 IS TO HONOR THE PLAINTIFF'S CHOICE OF FORUM.

7 **MR. WINTERS:** AND --

8 **THE COURT:** AND TO -- ONLY IF PERHAPS THERE WAS NO
9 JURISDICTION OR NO VENUE HERE WOULD I HAVE A PROBLEM. BUT
10 THERE'S CLEARLY JURISDICTION AND VENUE HERE SINCE CYPRESS IS
11 HERE. SO I DON'T THINK WE HAVE A LEXECON PROBLEM AT ALL, UNLESS
12 YOU'RE SOMEHOW SAYING THAT LEXECON IMPACTS BIFURCATION.

13 **MR. WINTERS:** WE UNDERSTAND THE COURT'S VIEW ABOUT
14 THAT. I THINK WE RESPECTFULLY DISAGREE. WE THINK THAT LEXECON
15 DOES REQUIRE THAT THE CASE GO BACK IF THERE'S NOT CONSENT BY THE
16 DEFENDANT AS WELL. BUT WE UNDERSTAND THAT THE COURT HAS A
17 DIFFERENT VIEW ABOUT THAT.

18 I JUST WANT TO PRESERVE OUR POSITION HERE THAT
19 BECAUSE OF LEXECON, THIS IDEA OF SPLITTING THE CONSPIRACY AND
20 THE DAMAGES FOR THE IP'S AND TRYING THE CONSPIRACY HERE AND
21 SENDING THE DAMAGES BACK TO THE STATES WOULD ALSO BE
22 INCONSISTENT WITH LEXECON.

23 WE UNDERSTAND THE COURT HAS A DIFFERENT VIEW ABOUT
24 LEXECON.

25 **THE COURT:** WELL, I DON'T HAVE TO DO THAT IF YOU ALL

1 CAN AGREE ON SOME EFFICIENT METHOD OF TRYING ALL THE IP CLAIMS
2 HERE ALONG THE LINES OF WHAT COUNSEL WAS SAYING. THEN I WOULD
3 ONLY BE TEMPTED TO SEND THEM BACK IF I HAD TO DO 25 TRIALS.

4 **MR. WINTERS:** RIGHT.

5 **THE COURT:** SO AND DP DISCLAIMS?

6 **MR. COTCHETT:** YES. THANK YOU, YOUR HONOR.

7 WE UNDERSTAND THE COURT'S -- THIS IS JOSEPH COTCHETT
8 FOR THE DIRECT PLAINTIFFS.

9 WE UNDERSTAND YOUR NEED FOR EFFICIENCY. WE CERTAINLY
10 WELCOME IT. WE ASKED FOR A BIFURCATION UNDER 42B. WHAT WE
11 REALLY ASKED FOR WAS THIS, AND I THINK THERE'S A PRAGMATIC
12 ANSWER HERE. I TEND TO AGREE WITH COUNSEL FROM CYPRESS THAT I
13 THINK WE'VE ALL LOOKED TO SEE HAS THIS EVER BEEN DONE BEFORE.

14 THE FACT OF THE MATTER IS WE CAN'T FIND ANY PLACE
15 IT'S EVER BEEN DONE. IT'S UNIQUE. CAFA IS INTERESTING. CAFA
16 HAS NOW SHIFTED ALL THE BURDEN TO YOU FROM ACROSS THE STREET. I
17 THINK IT MIGHT BE A PRACTICAL WAY.

18 WE DO NOT BELIEVE THAT THE IP SHOULD BE TRIED WITH US
19 FOR MANY DIFFERENT REASONS. A, THEY ONLY SUED CYPRESS, SO A
20 WITNESS ON THE STAND, YOU'RE GOING TO HAVE TO GIVE A LIMITING
21 INSTRUCTION AS TO WHAT COMES IN AGAINST CYPRESS, WHAT COMES IN
22 AGAINST SAMSUNG.

23 WE HAVE INCONSISTENT TIME PERIODS. WE'LL GET TO
24 THAT, I ASSUME, DURING THE DAMAGE PHASE, ALTHOUGH THAT WILL COME
25 IN UNDER THE CONSPIRACY PHASE AS WELL 'CAUSE THE JURY WILL HAVE

1 TO DETERMINE WHAT THE PERIOD WAS OF THE CONSPIRACY AS LAID OUT
2 BEFORE THEM.

3 WE GOT DIFFERENT PRODUCTS HERE. THEY SUED AND
4 BROUGHT IN PSRAM. WE ONLY HAVE SRAM.

5 **THE COURT:** OH, REALLY?

6 **MR. COTCHETT:** THAT'S ALL OUR -- WESTELL
7 UNFORTUNATELY BOUGHT. I DON'T MEAN TO SAY "UNFORTUNATELY."

8 **THE COURT:** OH, DOES THAT MEAN I DON'T HAVE DECIDE
9 THE PSRAM MOTION?

10 **MR. COTCHETT:** WELL, THAT'S A VERY GOOD QUESTION.
11 AND I'M GOING TO DEFER TO MY COUNSEL ON THAT. IT APPEARS TO ME
12 THAT THE WAY WE'RE SITTING PRESENTLY WITH OUR EXPERTS -- EXCUSE
13 ME -- WITH OUR PLAINTIFF, WE DO NOT HAVE.

14 THE ANSWER IS I DON'T WANT TO GO THERE. I THINK YOU
15 DO HAVE TO DECIDE THAT BECAUSE IT IS A RELATED PRODUCT BUT A
16 DIFFERENT PRODUCT. WE'LL COME BACK TO THAT.

17 YOU CAN SEE I'M NOT DANCING.

18 NOW, HAVING SAID THAT, HERE'S THE PRACTICAL ASPECT.
19 I THINK IF THIS CASE IS TRIED JUST BY THE DP'S -- AND I COUNTED
20 WITNESSES, TOO. WE CAN TAKE THIS FROM A SIX-WEEK TRIAL DOWN TO
21 A FOUR-WEEK TRIAL. WE CAN REALLY MAKE THIS THING HUM AND WORK.

22 **THE COURT:** BUT I HAVE TO TRY THE IP CONSPIRACY ALL
23 OVER AGAIN --

24 (SIMULTANEOUS COLLOQUY.)

25 **MR. COTCHETT:** AND HERE'S WHERE I'M GOING ON THIS.

1 THERE ARE MANY WAYS THIS COULD BE SOLVED IF, FOR EXAMPLE,
2 COUNSEL FOR IP AND COUNSEL FOR CYPRESS -- THAT'S ALL WE'RE
3 TALKING ABOUT -- WOULD STIPULATE THAT WHATEVER THE JURY DID IN
4 THE FIRST TRIAL WOULD END THE CONSPIRACY PHASE.

5 FOR -- FROM A PRAGMATIC STANDPOINT, I CAN'T IMAGINE
6 THEY'RE GOING TO COME BACK AND TRY 12 DIFFERENT CASES SENT TO 12
7 DIFFERENT COURTS AND A MAJOR CASE HERE. THAT ISN'T HOW THE
8 WORLD IS WORKING TODAY.

9 **THE COURT:** NOT USUALLY, BUT THINGS HAPPEN.

10 **MR. COTCHETT:** THINGS DO HAPPEN, AND THE EASIEST WAY
11 TO MAKE THIS TRIAL MOVE VERY QUICKLY IS THAT IF THE --
12 INDEPENDENT -- IP PEOPLE STIPULATED WITH CYPRESS THAT THE
13 CONSPIRACY CAN BE THE FINDING --

14 **THE COURT:** IF YOU CAN --
15 (SIMULTANEOUS COLLOQUY.)

16 **MR. COTCHETT:** THAT WOULD END THE WHOLE THING. WE
17 CAN START THIS TRIAL, BOOM, BOOM, BANG, BANG, THE WAY YOU RUN
18 THIS COURT, IT WOULD BE OVER IN THREE OR FOUR WEEKS.

19 **THE COURT:** IF YOU CAN GET THEM TO AGREE TO THAT, I'D
20 BE HAPPY.

21 **MR. COTCHETT:** WELL, UNDER 42B, YOU HAVE THE RIGHT TO
22 SEVER THAT, AND AT SOME POINT IN TIME, YOU'RE GOING TO DRIVE
23 THAT MESSAGE HOME.

24 **THE COURT:** IF -- IF THEY WOULD STIPULATE TO IT, I
25 WOULD DEFINITELY DO IT. IF ALL IT IS IS, OH, JUST GO AHEAD AND

1 TRY THE SIX-WEEK TRIAL AND PROBABLY YOU WON'T HAVE TO DO IT OVER
2 AGAIN --

3 **MR. COTCHETT:** IT'S NOT GOING TO BE A SIX-WEEK TRIAL
4 WITHOUT THE IP'S IN HERE. IT'S GOING --

5 **THE COURT:** AND IT'S INCONVENIENT. I MEAN, WE HAVE
6 ALL THESE KOREAN WITNESSES. WE HAVE TO BRING ALL THESE PEOPLE
7 OVER. IT'S JUST --

8 **MR. COTCHETT:** YEAH.

9 **THE COURT:** I JUST DON'T SEE --

10 (SIMULTANEOUS COLLOQUY.)

11 **MR. COTCHETT:** -- PERSUASION BY THIS COURT AND OTHERS
12 CAN GET THEM TO COME TO SOME SORT OF STIPULATION. YOU'VE GOT
13 RES JUDICATA TO DEAL WITH, TOO, I THINK.

14 **THE COURT:** WELL, THAT'S WHY I WANT TO DO IT THIS
15 WAY. THAT'S WHY I WANT TO DO IT THIS WAY.

16 **MR. McGINNIS:** YOUR HONOR, IF YOU'LL INDULGE ME, I
17 JUST WANT TO MAKE SURE I'M NOT CONFUSED, WHICH IN MY CASE
18 HAPPENS WITH SOME FREQUENCY. AND THAT IS SIMPLY SPEAKING IN
19 PRACTICAL TERMS, WHEN SAMSUNG SHOWS UP FOR TRIAL, MY
20 UNDERSTANDING OF WHAT THE COURT HAS IN MIND IS ALL OF OUR
21 EVIDENCE COMES IN, ALL OF THE ISSUES ARE BEFORE THE JURY,
22 THERE'S NO EVIDENCE THAT DOESN'T COME IN, AND THE JURY THEN
23 DECIDES ALL OF THE ISSUES, AND SOME POINT PERHAPS THE INDIRECT
24 PURCHASERS GO HOME AND THEY'RE NOT INVOLVED.

25 BUT WHAT WE'RE -- IF THERE'S SOME KIND OF -- IF THERE

1 IS A SITUATION WHERE SOME EVIDENCE IS ADMISSIBLE ON ONE PHASE OR
2 NOT ON ANOTHER, THAT'S WHETHER THE PROBLEM STARTS. BUT WHAT I'M
3 HEARING -- I THINK WHAT I HEARD FROM MR. COTCHETT WAS WHAT MAKES
4 SENSE IS FOR ALL OF THE DIRECT PURCHASER ISSUES TO BE TRIED. WE
5 SHOW UP HERE. WE ARE -- ALL THE OF THE ISSUES, ALL OF THE
6 EVIDENCE, AND THEN THE COURT HAS -- WHETHER THEY SEND THE
7 INDIRECT PURCHASERS HOME FOR ANOTHER PHASE, RATHER, FOR DAMAGES,
8 THAT WOULD MAKE SENSE.

9 BUT IF I MAKE ONE POINT CLEAR TO THE COURT TODAY,
10 MAYBE TWO, WHAT I'M -- WHAT I'M TRYING IS TO SAY THAT IF THERE'S
11 ANY PHASING THAT THE COURT HAS IN MIND THAT CAUSES EVIDENCE IN
12 THE COURT'S VIEW NOT TO BE ADMISSIBLE IN ONE OF THE PHASES, THAT
13 CAUSES SAMSUNG HUGE PROBLEMS. AND I THINK IT CAUSES THE COURT
14 PROBLEMS.

15 **THE COURT:** WELL, THE ADMISSIBILITY WOULD BE -- THE
16 THINGS THAT MR. COTCHETT WAS ALLUDING TO ARE THAT IT'S POSSIBLE,
17 ALTHOUGH I'M NOT SURE IT WOULD BE, THAT SOME EVIDENCE MIGHT BE
18 ADMISSIBLE AGAINST SAMSUNG BUT NOT AGAINST CYPRESS OR VICE VERSA
19 IN THE CONSPIRACY TRIAL.

20 WELL, THAT'S --

21 **MR. McGINNIS:** IF I MAY, YOUR HONOR --

22 **THE COURT:** THAT'S TRUE. THERE WOULD BE -- LIKE
23 SAMSUNG'S ADMISSIONS, FOR EXAMPLE, WOULD BE ADMISSIBLE AGAINST
24 SAMSUNG BUT NOT --

25 (SIMULTANEOUS COLLOQUY.)

1 **MR. McGINNIS:** THAT'S A DIFFERENT ISSUE.

2 **THE COURT:** BUT -- AND THEN -- THAT'S ONE ISSUE. AND
3 THE OTHER ISSUE IS THAT GENERALLY SPEAKING, I WOULD WANT TO HEAR
4 CONSPIRACY EVIDENCE IN THE FIRST PHASE AND NOT IMPACT AND DAMAGE
5 EVIDENCE. I WOULDN'T BE WILDLY STRICT ABOUT THAT IF THERE WAS
6 AN ARGUMENT THAT COULD BE MADE THAT IT WAS -- ALTHOUGH IT SEEMED
7 TO BE DAMAGES EVIDENCE, IT WAS RELEVANT TO THE CONSPIRACY. I
8 WOULD PROBABLY ALLOW IT.

9 I WOULDN'T WANT TO -- I'D ERR ON THE SIDE OF ALLOWING
10 IT RATHER THAN SPENDING A LOT OF TIME PARSING IT OUT. BUT IF IT
11 WAS CLEARLY RELEVANT ONLY TO DAMAGES, THEN, NO, IT WOULDN'T COME
12 IN ON THE LIABILITY --

13 (SIMULTANEOUS COLLOQUY.)

14 **MR. McGINNIS:** -- PRECISELY WHERE THE RUBBER MEETS
15 THE ROAD AND WHERE WE HAVE A PROBLEM, BECAUSE I THINK THAT THE
16 LIABILITY -- PARTICULAR -- NOT ONLY A LEGAL PROBLEM, BUT A
17 PRACTICAL PROBLEM ABOUT WITH WHETHER WE'RE ACTUALLY GOING TO
18 SAVE ANY TIME BECAUSE THE ISSUES OF LIABILITY IMPACT AND
19 DAMAGES --

20 **THE COURT:** YOU AREN'T GOING TO SAVE ANY TIME.

21 **MR. McGINNIS:** -- ARE ALL --

22 **THE COURT:** YOU AREN'T GOING TO SAVE ANY TIME.

23 **MR. McGINNIS:** WELL, THEN I WON'T WORRY ABOUT THAT
24 THEN.

25 **THE COURT:** NO, I MEAN, YOU HAVE TO TRY THE WHOLE

1 CASE SOMETIME --

2 **MR. McGINNIS:** THAT'S RIGHT.

3 **THE COURT:** -- AGAINST THE DP'S. SO THIS WILL BE
4 YOUR TRIAL, AND YOU WILL HAVE TO BE THERE FOR THE WHOLE THING
5 AND IT'S NOT GOING TO BE ANY SHORTER FOR YOU THAN IT OTHERWISE
6 WOULD. IN FACT, IT MIGHT BE A LITTLE LONGER BECAUSE YOU'LL HAVE
7 CYPRESS IN THERE, BUT IT WILL SAVE ME TIME HOWEVER.

8 (SIMULTANEOUS COLLOQUY.)

9 **THE COURT:** -- SAVE WITNESSES TIME, AND IT WILL SAVE
10 THE PLAINTIFFS' ATTORNEYS TIME.

11 **MR. McGINNIS:** BUT WHAT CAUSES PROBLEMS, THOUGH, IS
12 TRYING TO PARSE WHAT EVIDENCE IS ADMISSIBLE ON LIABILITY OR
13 IMPACT OR DAMAGES OR WHAT ISN'T AND --

14 **THE COURT:** WELL, YOU'LL HAVE TO COME UP WITH SOME
15 COLORABLE THEORY AS TO WHY SOMETHING IS ADMISSIBLE ON THE
16 CONSPIRACY THAT APPEARS TO BE ONLY ADMISSIBLE ON DAMAGES. IF
17 YOU CAN COME UP WITH SOMETHING COLORABLE, I'LL LET IT IN. IF
18 YOU CAN'T, THEN NO, IT'S DAMAGES EVIDENCE.

19 **MR. McGINNIS:** WELL, THEN I GUESS I HAVE TO SAY I
20 RESPECTFULLY -- OUR RESPECTFUL BUT VEHEMENT VIEW IS THAT THAT
21 CAUSES UNNECESSARY EVIDENTIARY AND APPELLATE PROBLEMS TO TRY TO
22 DO THAT. AND SINCE WE'RE NOT GOING TO SAVE ANY TIME --

23 **THE COURT:** WE WILL --

24 (SIMULTANEOUS COLLOQUY.)

25 **THE COURT:** -- REVERSIBLE ABOUT IT.

1 **MR. McGINNIS:** WELL, IF THERE IS SOME EVIDENCE THAT
2 WE THINK WAS ADMISSIBLE ON LIABILITY, SAY FROM AN EXPERT AND
3 YOUR HONOR DID NOT, THEN THAT'S AN APPELLATE ISSUE. AND I JUST
4 DON'T SEE WHY WE NEED TO GO DOWN THAT ROAD. AND IT -- YOU KNOW,
5 WE WOULD LIKE TO SIMPLY SHOW UP, SAY HERE WE ARE, WE'RE READY TO
6 TRY THE CASE, LET'S TRY IT FROM SOUP TO NUTS AND NOT HAVE THE
7 ADDITIONAL WORRY ABOUT, GEE, IS THIS EVIDENCE GOING TO BE
8 ADMISSIBLE IN THE FIRST PHASE OR NOT.

9 **THE COURT:** OKAY.

10 SO ARE WE DONE ON BIFURCATION, THEN?

11 **MR. MICHELETTI:** WELL, I JUST WANT TO ADDRESS A
12 COUPLE POINTS THAT MR. COTCHETT MADE WITH REGARDS TO THIS GOING
13 FORWARD WITHOUT THE IPP'S. I MEAN, MR. COTCHETT INDICATED THAT
14 THE TRIAL WOULD BE SHORTER. I'M NOT NECESSARILY SURE THAT WOULD
15 BE THE CASE. CYPRESS IS PART OF THE CONSPIRACY, AND THEY WOULD
16 NEED TO PUT ON EVIDENCE OF CYPRESS'S INVOLVEMENT.

17 **THE COURT:** YEAH, I REALLY STILL THINK THAT THE WAY
18 I'VE SUGGESTED IS A GOOD WAY, SO IF YOU LIKE IT, THEN YOU DON'T
19 NEED TO --

20 **MR. MICHELETTI:** I WILL STOP.

21 (SIMULTANEOUS COLLOQUY.)

22 I DON'T LIKE IT SO I'M GOING TO --

23 (OFF-THE-RECORD DISCUSSION.)

24 **THE COURT:** I REALLY NEED ONE PERSON PER ARGUMENT,
25 PLEASE.

1 (SIMULTANEOUS COLLOQUY.)

2 **THE COURT:** I'VE HAD THREE SO FAR.

3 **MR. RUBIN:** WE HAD JUST DIVIDED UP SUBSTANCE --

4 (OFF-THE-RECORD DISCUSSION.)

5 **MR. RUBIN:** OKAY. LEE RUBIN.

6 SO THE -- I BELIEVE YOU MADE A RULING EARLIER WHEN WE
7 WERE GOING THROUGH THE MOTION IN LIMINES IN THIS CASE THAT
8 DR. NOLL COULD TESTIFY THAT THERE WAS A PERIOD OF TIME, 27
9 MONTHS, WHERE PRICES WERE INFLATED. I THINK YOU SAID THAT WAS A
10 MATTER OF COMMON SENSE THAT --

11 **THE COURT:** NOLL?

12 **MR. RUBIN:** -- I'M SORRY. THAT DR. -- THAT LEVY
13 WOULD BE -- THAT -- THAT NOLL WOULD BE ABLE TO REFER TO DR. LEVY
14 AND SAY THAT THERE WAS THIS 27-MONTH PERIOD OF INFLATED PRICES.

15 **THE COURT:** THE MOTION WAS TO EXCLUDE AN EXPERT FROM
16 TESTIFYING THAT INFLATED PRICES PROVIDE SUPPORT FOR A
17 CONSPIRACY. AND YOU SAID THAT CAN'T COME IN BECAUSE IT WASN'T
18 DISCLOSED IN THE EXPERT'S REPORT.

19 I THINK IT WAS, AND I THINK IT CAN COME IN.

20 **MR. RUBIN:** RIGHT. SO I JUST WANT TO BE VERY CLEAR.
21 AS TO THAT, OUR POSITION WOULD BE -- AND IT WOULD REALLY HAVE TO
22 BE, AND I THINK THIS WOULD BE AN APPELLATE ISSUE -- THAT WE
23 WOULD TO HAVE CALL OUR DAMAGES EXPERT -- OUR DAMAGES EXPERT, NOT
24 OUR LIABILITY EXPERT, OUR DAMAGES EXPERT DR. BURTIS TO REBUT
25 THAT NOTION THAT THERE WAS A 27-MONTH PERIOD OF INFLATED PRICES

1 BECAUSE, OF COURSE, THE --

2 **THE COURT:** WELL, YOU KEEP THROWING IN THE 27-MONTH
3 PERIOD. THAT'S NOT WHAT THE MOTION ADDRESSED. BUT THAT'S FINE.
4 IF YOU WANT TO BRING YOUR DAMAGES EXPERT IN TO REBUT THAT,
5 THAT'S FINE.

6 **MR. RUBIN:** OKAY. I JUST WANT TO BE CLEAR. I MEAN,
7 WE STILL THINK THAT --

8 **THE COURT:** THAT'S FINE.

9 **MR. RUBIN:** -- AS MR. CONNELLY SAID, THERE'S A
10 PRACTICAL ASPECT TO THIS THAT THESE CASES WOULD GO AWAY IF THE
11 DP'S WERE TRIED FIRST. I AGREE WITH MR. COTCHETT ON THAT.

12 **THE COURT:** WELL, HIS IDEA IS A GOOD ONE IF CYPRESS
13 AND THE IP'S ARE WILLING TO STIPULATE THAT THE RESULT OF THE --
14 WELL, NO, CYPRESS COULDN'T STIPULATE TO THAT.

15 NO, THEY CAN'T BECAUSE THEY THINK THEY DIDN'T
16 CONSPIRE. SO THE FACT THAT SAMSUNG CONSPIRED, THEY COULD NEVER
17 STIPULATE THAT THAT MEANT THAT CYPRESS --

18 **MR. RUBIN:** NO, NO. WE'RE SAYING WE'RE GOING TO BE
19 IN THE TRIAL WITH THE DIRECT PURCHASERS. IT'S DIRECT PURCHASERS
20 VERSUS CYPRESS AND SAMSUNG.

21 (SIMULTANEOUS COLLOQUY.)

22 **THE COURT:** OH, RIGHT. THEY WOULD BE THERE ANYWAY.

23 OH, RIGHT. OKAY. SO YOU WOULD AGREE, THEN, IF YOU
24 WERE FOUND TO HAVE CONSPIRED VIS-A-VIS THE DIRECTS, THAT YOU
25 WOULD AGREE TO ALLOW THAT RESULT, EITHER WAY I SUPPOSE, TO BE

1 RES JUDICATA WITH RESPECT TO THE IP'S.

2 SO IF THE IP'S AND CYPRESS WOULD AGREE TO THAT, THAT
3 WOULD BE GREAT.

4 **MR. COTCHETT:** THAT SOLVES THE WHOLE PROBLEM.

5 **THE COURT:** YOU COULD TALK ABOUT THAT.

6 **MR. RUBIN:** WELL, WE'LL CONFER ON THAT. I'M JUST
7 SAYING AS A PRACTICAL MATTER, I THINK THAT ONE WAY OR THE OTHER,
8 THE IP ISSUES, AS MR. CONNELLY SAID, TEND TO RESOLVE THEMSELVES.
9 THE OTHER THING I WOULD SAY IS -- I DON'T WANT TO SPEAK FOR
10 SAMSUNG -- IS, YOU KNOW, IN A JOINT TRIAL, THEY WOULD BE FORCED
11 TO ACTUALLY CROSS-EXAMINE MR. HARRIS WHO'S AN IP EXPERT.

12 SO I KNOW THAT YOUR HONOR IS LOOKING FOR EFFICIENCY,
13 BUT YOU'RE IN A SITUATION THIS -- SAMSUNG'S IN A SITUATION WITH
14 YOU -- THEY WOULD BE -- EVIDENCE WOULD BE COMING IN. IT'S NOT
15 JUST AN ISSUE OF ADMISSIONS, WHICH I KNOW THE COURT ALWAYS DEALS
16 WITH IN CODEFENDANT CASES.

17 BUT THERE WOULD ACTUALLY BE EXPERTS IN THIS JOINT
18 TRIAL THAT SAMSUNG -- THAT THE JURY COULD BE CONSIDERED IN
19 DECIDING WHETHER SAMSUNG IS LIABILITY TO THE DIRECT PURCHASERS,
20 AND THOSE ARE INDIRECT PURCHASER EXPERTS. SO I DON'T -- I DON'T
21 KNOW HOW YOU --

22 **THE COURT:** THE TRUTH IS THE TRUTH.

23 **MR. RUBIN:** WHAT'S THAT?

24 **THE COURT:** THE TRUTH IS THE TRUTH, WHATEVER THE JURY
25 BELIEVES FROM THESE EXPERTS.

1 **MR. RUBIN:** I JUST --

2 **THE COURT:** HOPEFULLY THEY WOULD SAY THE SAME THING
3 UNDER WHATEVER CIRCUMSTANCES THEY WERE TESTIFYING.

4 **MR. RUBIN:** WELL, THERE ARE TRUTH ON THE BOTH SIDES.
5 THERE ARE TWO EXPERTS WHO ARE TELLING TRUTH.

6 **THE COURT:** RIGHT. OKAY. SO CAN WE MOVE ON?

7 **MR. COTCHETT:** YES.

8 **THE COURT:** OKAY.

9 **MR. McGINNIS:** YES, YOUR HONOR.

10 **THE COURT:** MOTIONS IN LIMINE OR -- HOW ABOUT
11 DAMAGES? I -- I'M AFRAID THAT I HAVE A REALLY DUMB QUESTION TO
12 ASK ABOUT DAMAGES. DO -- DOES NOBODY EVER HAVE TO PROVE THAT
13 THEY ACTUALLY SUFFERED ANY DAMAGES? I MEAN, DO YOU JUST ASK FOR
14 \$459 MILLION, AND IF YOU GET IT, GREAT. AND THEN HOW DO YOU
15 DIVIDE IT UP AMONGST ALL THE PLAINTIFFS? DON'T THE PLAINTIFFS
16 EVER HAVE TO COME IN LIKE YOU DO IN A REGULAR CASE AND SAY I
17 BOUGHT THIS AND I PAID 9.99 AND I SHOULD HAVE PAID 8.99 SO I GET
18 A DOLLAR?

19 **MR. COTCHETT:** THE ANSWER IS THAT'S ALL DONE
20 SUBSEQUENT TO TRIAL IN A CLAIMS PROCESS.

21 **THE COURT:** REALLY.

22 **MR. COTCHETT:** YEAH.

23 **THE COURT:** AND PEOPLE AGREE TO THAT?

24 **MR. McGINNIS:** NOT NECESSARILY.

25 **MR. COTCHETT:** THAT'S THE PROCEDURE THAT'S ADOPTED BY

1 THE COURTS, JUST LIKE A SECURITIES CASE. YOU HAVE ONE SECURITY
2 PLAINTIFF IN FRONT OF YOU. AND THEN WHOEVER BOUGHT THAT GOES
3 THROUGH A CLAIMS PROCESS, SAME WAY IN EVERY ANTITRUST CASE WE'VE
4 HANDLED, AND THERE'S --

5 **THE COURT:** AND THERE'S NO JURY IN THAT PROCEDURE?

6 **MR. COTCHETT:** THERE IS NOT.

7 **THE COURT:** DOES ONE --

8 **MR. COTCHETT:** IT IS PURSUANT TO RULE AND YOU APPOINT
9 A SPECIAL MASTER, AND THAT'S HOW DAMAGES ARE DONE.

10 **THE COURT:** HMM.

11 **MR. McGINNIS:** NOT SURE WE FULLY AGREE WITH ALL THAT,
12 YOUR HONOR.

13 **THE COURT:** WELL, YOU BETTER MAKE SURE THAT YOU DO
14 BECAUSE I ONCE HAD A CASE WHERE THAT HAPPENED AND THE PLAINTIFFS
15 SAID, OH, NOW WE HAVE A CLAIMS PROCEDURE, AND THE DEFENDANT SAID
16 I HAVE A SEVENTH AMENDMENT TO A JURY TRIAL ON DAMAGES, AND I
17 CLAIM IT. IT WAS A HUGE PROBLEM. SO IF THAT'S YOUR VIEW, I
18 THINK YOU BETTER TALK ABOUT IT AND MAKE SURE THAT'S EVERYBODY'S
19 VIEW.

20 **MR. McGINNIS:** WE WILL DO THAT, YOUR HONOR.

21 **THE WITNESS:** AND WHAT HAPPENS TO THE REST OF THE
22 \$4.58 MILLION? I MEAN, ASSUMING WE DON'T GET ENOUGH PEOPLE
23 COMING FORWARD TO SAY I PAID --

24 **MR. COTCHETT:** THAT ISSUE --

25 (SIMULTANEOUS COLLOQUY.)

1 **THE COURT:** -- AND IT DOESN'T ADD UP TO 458 MILLION,
2 WHO GETS TO KEEP THE REST?

3 **MR. COTCHETT:** THAT ISSUE HAS BEEN ADDRESSED IN EVERY
4 SECURITY CASE AND EVERY ANTITRUST CASE THAT'S BEEN TRIED.

5 **THE COURT:** AND WHAT'S THE ANSWER?

6 **MR. COTCHETT:** THE ANSWER IS --

7 **THE COURT:** I MEAN, I TOLD YOU THIS WAS A DUMB
8 QUESTION, SO --

9 **MR. COTCHETT:** NO, YOU DO IT THROUGH A CLAIMS
10 PROCESS.

11 **THE COURT:** I KNOW, BUT WHO GETS THE LEFT-OVER MONEY?

12 **MR. COTCHETT:** IT'S GOES CY PRES, IT CAN, MUCH OF IT,
13 IF IT ISN'T COLLECTED.

14 **THE COURT:** IN SETTLEMENT, THAT'S CERTAINLY TRUE, BUT
15 THAT'S WHAT WOULD HAPPEN AFTER A TRIAL?

16 **MR. COTCHETT:** THERE'S CASE LAW ON THAT.

17 **THE COURT:** IS THAT RIGHT?

18 **MR. MCGINNIS:** I HAVE TO CONFESS, YOUR HONOR, I'M NOT
19 SURE.

20 **THE COURT:** WELL, WE BETTER FIND OUT BECAUSE I DON'T
21 WANT SUDDENLY HEAR THAT THERE'S A JURY TRIAL RIGHT TO
22 EVERYBODY'S INDIVIDUAL DAMAGE CLAIM.

23 **MR. MCGINNIS:** I THINK HE IS CORRECT ABOUT WHAT
24 HAPPENS WITH --

25 **THE COURT:** OKAY. WELL, LET'S GET THAT NAILED DOWN.

1 **MR. WILLIAMS:** WE'LL GET THAT NAILED DOWN, YOUR
2 HONOR.

3 **MR. MCGINNIS:** PERHAPS WHY I'M DISTRACTED, YOUR
4 HONOR, ON THAT PARTICULAR ISSUE, IS WHAT'S REALLY, REALLY
5 BOTHERING ME AND BOTHERING SAMSUNG IS YOUR INCLINATION ON THE
6 DRAM. BECAUSE I THINK THAT'S A CRITICAL ISSUE AND ALSO AFFECTS
7 HOW LONG THE TRIAL WILL TAKE.

8 AND --

9 **THE COURT:** SO WE'RE MOVING ON NOW TO ARGUE THE
10 MOTIONS IN LIMINE?

11 **MR. COTCHETT:** YES.

12 **MR. MCGINNIS:** IF I -- I THOUGHT THAT'S SORT OF WHERE
13 YOUR HONOR WAS GOING, BUT OBVIOUSLY --

14 (SIMULTANEOUS COLLOQUY.)

15 **THE COURT:** NO, GO AHEAD. THAT'S FINE. I JUST GOT
16 THIS DISTRACTED BY THE DAMAGE --

17 **MR. MCGINNIS:** I WOULD SUGGEST THAT MY COLLEAGUE MONA
18 SOLOUKI ADDRESS THIS ISSUE BECAUSE I THINK SAMSUNG IS THE ONE
19 THAT IS MOST IN THE CENTER OF THE RADAR SCREEN ON THAT ONE GIVEN
20 THAT WE DID ENTER PLEAS IN THE DRAM CASE.

21 SO IF THE COURT PLEASE, IF MY COLLEAGUE --

22 **THE COURT:** WELL, THE THING IS WE'VE GOT, LIKE, ABOUT
23 20 MOTIONS IN LIMINE AND WE HAVE MAYBE AN HOUR WORTH OF TIME, SO
24 YOU NEED TO CHOOSE THE WORST THINGS THAT I'VE SAID AND ARGUE
25 THOSE. YOU'RE NOT --

(SIMULTANEOUS COLLOQUY.)

MR. McGINNIS: YOUR HONOR, THAT'S PRECISELY WHAT WE'RE DOING. AND IN FACT, FOR EXAMPLE, INCLINATION ABOUT COCONSPIRATOR STATEMENTS BEING DISCLOSED A WEEK BEFORE TRIAL WILL BE JUST FINE. OBVIOUSLY, WE'LL DO WHAT THE COURT WANTS ON BACK TO THE DRAWING BOARD WITH -- WITH JURY INSTRUCTIONS.

THE COURT: OKAY.

MR. McGINNIS: BUT YOU'RE EXACTLY RIGHT. THIS IS THE WORST THING.

THE COURT: OKAY.

MR. McGINNIS: -- ON THE MOTIONS IN LIMINE --

THE COURT: WORST THING I'VE DONE SO FAR?

MR. McGINNIS: THANK YOU FOR INDULGING ME, YOUR HONOR, BUT I'M NOT GOING TO TOUCH THAT ONE.

(LAUGHTER.)

MS. SOLOUKI: GOOD AFTERNOON, YOUR HONOR, SORRY. MONA SOLOUKI FOR THE SAMSUNG DEFENDANTS.

YOUR HONOR, I JUST WANT TO FIRST START WITH WHAT THE DEFENDANT -- WHAT THE PLAINTIFFS HAVE ACTUALLY CONCEDED IN THIS CASE BECAUSE I THINK IT'S IMPORTANT YOUR HONOR'S DECISION AS TO WHETHER THE DRAM PLEA IS ACTUALLY ADMISSIBLE IN THIS CASE FOR OTHER PURPOSES.

THE PLAINTIFFS CONCEDE AT THE THRESHOLD THAT THIS EVIDENCE IS NOT ADMISSIBLE, EVIDENCE OF PRIOR CONVICTIONS ARE NOT ADMISSIBLE TO PROVE LIABILITY.

1 THAT'S --

2 **THE COURT:** IT'S NOT ADMISSIBLE FOR PROPENSITY, BUT
3 IT'S ADMISSIBLE FOR MANY OTHER THINGS.

4 **MS. SOLOUKI:** PROPENSITY, EXACTLY, YOUR HONOR. IT'S
5 NOT ADMISSIBLE TO SHOW THAT BECAUSE THE DEFENDANTS DID IT THERE,
6 THEY MUST HAVE DONE IT HERE. THAT GOES TO THE ISSUE OF
7 LIABILITY.

8 **THE COURT:** IT GOES TO PROPENSITY. EVERYTHING GOES
9 TO LIABILITY. WHAT YOU'RE REFERRING TO GOES TO PROPENSITY AND
10 THAT'S THE IMPROPER PURPOSE. BUT THERE'S MANY OTHER THINGS THAT
11 GO TO LIABILITY, SUCH AS PLAN, SCHEME, DESIGN, MODUS OPERANDI,
12 INTENT, KNOWLEDGE, IDENTITY, AND ALL THOSE THINGS.

13 **MS. SOLOUKI:** WELL, YOUR HONOR, THAT'S ONE OF THE
14 THINGS. WHEREVER THIS EVIDENCE -- THIS SORT OF EVIDENCE OF
15 PRIOR BAD ACT, LET'S CALL IT, COMES IN FOR SOME KIND OF OTHER
16 PURPOSE THAN PROPENSITY, IT IS COMING IN FOR A LIMITED PURPOSE.

17 **THE COURT:** TRUE.

18 **MS. SOLOUKI:** AND IT IS OFTEN -- OFTEN INSTRUCTIONS
19 ARE GIVEN TO THE JURY --

20 **THE COURT:** SURE, AND WE WOULD GIVE ONE. WE WOULD
21 GIVE ONE.

22 **MS. SOLOUKI:** SO THAT THE JURY DOES NOT CONSIDER THE
23 EVIDENCE AS, WELL, DEFENDANTS --

24 **THE COURT:** SURE.

25 **MS. SOLOUKI:** -- MUST HAVE DONE IT.

1 **THE COURT:** SURE.

2 **MS. SOLOUKI:** BUT THE QUESTION HERE IS WHAT EXACTLY
3 IS IT THAT THEY'RE GOING TO BE OFFERING IT FOR.

4 YOUR HONOR REFERRED TO THE LITANY OF EXCEPTIONS THAT
5 ARE ENUMERATED IN RULE 404B. THEY'VE LISTED THOSE SAME
6 EXCEPTIONS IN THE LITANY. BUT THEY HAVE NOT ARGUED ANY OF THOSE
7 OTHER THAN ONE THING THAT IS NOT ACTUALLY IN THE RULE ITSELF.
8 IT IS THE BACKGROUND -- OR TO PROVIDE, YOU KNOW, EVIDENCE OF THE
9 DEVELOPMENT OF THE SRAM, THE ALLEGED SRAM CONSPIRACY OR THAT
10 THIS EVIDENCE IS SOMEHOW ADMISSIBLE TO SHOW THAT THE SRAM
11 CONSPIRACY WAS MOTIVATED BY THE DRAM CONSPIRACY.

12 IN OTHER WORDS, THIS IS HOW THEIR ARGUMENT GOES, YOUR
13 HONOR. DEFENDANTS HATCHED OR SAMSUNG HATCHED A SUCCESSFUL DRAM
14 CONSPIRACY AND THEN THEY USED THAT AS A MODEL FOR THEIR SRAM
15 CONSPIRACY.

16 IT WAS WHAT MOTIVATED THE SRAM CONSPIRACY. IT
17 PROVIDES BACKGROUND FOR THE SRAM CONSPIRACY.

18 BUT, YOUR HONOR, THAT IS NOT EXACTLY WHAT HAPPENED
19 HERE. IF YOUR HONOR LOOKS AT THEIR ALLEGATIONS, YOU'LL SEE THAT
20 THAT ARGUMENT FALLS APART AT THE THRESHOLD. THAT IS THE ONLY
21 THING THEY'VE ARGUED REALLY. OTHER THAN --

22 **THE COURT:** NO, THEY HAVE A NUMBER OF OTHER ARGUMENTS
23 BUT --

24 **MS. SOLOUKI:** WELL, THE OTHERS, YOUR HONOR --

25 **THE COURT:** RULE 609, FOR EXAMPLE.

1 **MS. SOLOUKI:** EXCUSE ME?

2 **THE COURT:** RULE 609 IS ANOTHER ONE.

3 **MS. SOLOUKI:** WELL, LET'S DEAL WITH THE IMPEACHMENT
4 ISSUE IN A SECOND, BUT AS FAR AS ADMISSIBILITY OF THIS ISSUE FOR
5 OTHER PURPOSES UNDER 404(B) IS CONCERNED, EVERYTHING THAT THEY
6 ARGUE THAT, THE FACT THAT DRAM AND SRAM ARE RELATED, THEY SAY;
7 THE FACT THAT THEY SAY THERE ARE SOME OVERLAPS AT THE TOP OF THE
8 ORGANIZATIONAL CHART AND, YOU KNOW, IN SOME -- AT SOME LEVELS.
9 ALL OF THOSE THINGS GO TO THIS ONE -- THIS ONE OVERARCHING
10 ARGUMENT THAT THEY MAKE, THAT THIS EVIDENCE IS ADMISSIBLE TO
11 SHOW BACKGROUND FOR THE SRAM CONSPIRACY.

12 **THE COURT:** I DON'T READ THEIR ARGUMENT THAT WAY,
13 BUT -- GO AHEAD.

14 **MS. SOLOUKI:** I CAN POINT, YOUR HONOR, TO THEIR BRIEF
15 WHERE THEY SAY THIS.

16 **THE COURT:** WELL, THEY DO SAY THAT, BUT THEY SAY A
17 LOT OF OTHER THINGS, TOO.

18 **MS. SOLOUKI:** WELL, YOUR HONOR, LET'S DEAL WITH THIS
19 ONE FIRST, AND THEN WE GET TO THE INTENT AND EVERYTHING ELSE.

20 **THE COURT:** OKAY.

21 **MS. SOLOUKI:** AS FAR AS THIS BACKGROUND, I'M SURE
22 THAT YOUR HONOR HAS SEEN THE ARGUMENT THAT THEY'VE MADE WITH
23 RESPECT TO THE BACKGROUND. AND AS FAR AS THAT IS CONCERNED, THE
24 DRAM CONSPIRACY IS LIMITED TO THE 1999 THROUGH 2002 TIME PERIOD.
25 THAT'S UNDISPUTED. THAT WAS THE PERIOD OF THE PLEAS. IT WAS

1 THE PERIOD OF THE SUBPOENAS, THE CIVIL ACTIONS.

2 THE SRAM CONSPIRACY THAT THEY ALLEGE HERE THEY ALLEGE
3 STARTED SOMETIME IN 1996, THREE YEARS BEFORE THE DRAM CONSPIRACY
4 EVEN STARTED.

5 THERE'S NO WAY THAT THE DRAM CONSPIRACY COULD HAVE
6 SERVED AS THE BACKGROUND OR MOTIVATING FACTOR, AND THOSE ARE THE
7 THINGS THAT THEY SAY IN THEIR BRIEFS FOR A CONSPIRACY THAT THEY
8 ALLEGE STARTED SOMETIME IN '96 AND WAS OFF AND RUNNING,
9 ACCORDING TO THEM, FOR THREE YEARS. THAT'S THE FIRST POINT.

10 SO MY POINT, YOUR HONOR, IS THAT GIVEN THE FACT THAT
11 THIS EVIDENCE CAN'T BE -- CAN'T BE OFFERED FOR PURPOSE OF
12 SHOWING THAT BECAUSE SAMSUNG DID IT THERE, IT MUST HAVE DONE IT
13 HERE, YOUR HONOR'S VESTED WITH THE DUTY TO ENSURE THAT WHATEVER
14 PURPOSE THEY'RE GOING TO BE USING THIS EVIDENCE FOR IS ACTUALLY
15 GOING TO BE SO PROBATIVE THAT IT'S GOING TO OUTWEIGH THE
16 INHERENTLY PREJUDICIAL IMPACT OF A PRIOR CONVICTION IN A
17 DIFFERENT CASE RELATING TO A DIFFERENT PRODUCT.

18 THIS IS NOT A -- AN SRAM GUILTY PLEA WE'RE TALKING
19 ABOUT. THIS IS A GUILTY PLEA RELATING TO A DIFFERENT PRODUCT IN
20 A DIFFERENT MARKET THAT THEY'RE TRYING TO USE TO BOLSTER THEIR
21 EVIDENCE. IF THEY HAVE EVIDENCE THAT THERE WAS A CONSPIRACY IN
22 THIS CASE, YOUR HONOR, THEY CAN USE THAT EVIDENCE. THEY WANT TO
23 SHOW THAT THERE WERE PEOPLE COMMUNICATING WITH COMPETITORS WITH
24 EVIDENCE IN THIS CASE, THEY'RE FULLY CAPABLE OF DOING THAT. AND
25 ACCORDING TO THEM, I BELIEVE THEY SAY THEY HAVE SUFFICIENT

1 EVIDENCE.

2 UNDER THOSE CIRCUMSTANCES, IF THEY HAVE SUFFICIENT
3 EVIDENCE TO PROVE THIS CASE -- THEIR CASE, THEN WHY RISK WHAT WE
4 BELIEVE, YOUR HONOR, WOULD BE PREJUDICE -- WOULD BE REVERSIBLE
5 ERROR TO ADMIT A GUILTY PLEA FROM A DIFFERENT CASE HAVING TO DO
6 WITH A DIFFERENT PRODUCT AND A DIFFERENT MARKET IN ORDER TO
7 BOLSTER THEIR EVIDENCE.

8 **THE COURT:** OKAY. DID SAMSUNG WANT TO ADDRESS ANY OF
9 THE OTHER MOTIONS IN LIMINE?

10 **MR. SCARBOROUGH:** YES, VERY BRIEFLY, YOUR HONOR.
11 MIKE SCARBOROUGH ALSO FOR THE SAMSUNG DEFENDANTS.

12 ON SAMSUNG'S MOTION IN LIMINE NO. 2, REGARDING -- WE
13 HAD A GLOBAL MOTION TO EXCLUDE ANY OF THE EVIDENCE OF THE DOJ'S
14 SRAM INVESTIGATION. WE OBVIOUSLY AGREE WITH YOUR HONOR'S
15 TENTATIVE THERE. THE ONE PIECE THAT WAS, I GUESS, LEFT HANGING
16 WAS THE ISSUE OF SAMSUNG'S LENIENCY AGREEMENT THAT PLAINTIFFS
17 ACTUALLY SOUGHT PRODUCTION OF THIS LENIENCY AGREEMENT IN THE
18 COURSE OF DISCOVERY. THAT MOTION WAS DENIED.

19 BUT IF YOUR HONOR FEELS LIKE YOU NEED TO SEE THAT
20 LETTER AGREEMENT IN ORDER TO PROCEED WITH RESPECT TO THE
21 PROCEDURES THAT WE'RE TALKING ABOUT, WE'RE HAPPY TO PROVIDE IT
22 TO YOU FOR AN IN CAMERA INSPECTION. AND IF YOU DETERMINE THAT
23 IT NEEDS TO BE PRODUCED TO THE PARTIES, THAT'S -- THAT'S FINE AS
24 WELL. AND WE'D BE COMFORTABLE WITH THAT. SO WHENEVER YOU WANT
25 US TO DO THAT, WE CAN -- WE CAN GO AHEAD AND DO THAT.

1 **THE COURT:** SURE. WHY DON'T YOU JUST FILE IT UNDER
2 SEAL.

3 **MR. SCARBOROUGH:** OKAY. WE'LL BE HAPPY TO DO THAT.

4 **THE COURT:** YOU'LL NEED TO GIVE ME A SEALING ORDER TO
5 SIGN AND PUT SOME REASONING IN IT 'CAUSE I HAVE TO JUSTIFY ANY
6 TIME I FILE ANYTHING UNDER SEAL, BUT --

7 **MR. SCARBOROUGH:** OR I COULD ACTUALLY PROVIDE IT TO
8 YOU TODAY IF YOUR HONOR --

9 **THE COURT:** WELL, IT SHOULD BE PART OF THE RECORD, I
10 THINK, SO YOU SHOULD FILE IT UNDER SEAL.

11 **MR. SCARBOROUGH:** THAT'S FINE. AND IN TERMS OF
12 THE -- CYPRESS HAD A CROSSOVER MOTION IN LIMINE WHERE THEY SAID
13 THE ISSUE OF -- OF SAMSUNG'S LENIENCY AGREEMENT AND ITS ACPERA
14 STATUS WOULD BE SOMETHING THAT WOULD BE POTENTIAL FODDER FOR
15 IMPEACHMENT WITH SAMSUNG'S WITNESSES.

16 AND WE THINK THAT IN ORDER TO PRESERVE THE INTEGRITY
17 OF YOUR LARGER MOTION IN LIMINE RULING THAT ALL EVIDENCE OF THE
18 DOJ'S SRAM INVESTIGATION NEEDS TO STAY OUT, THAT WHATEVER THE
19 VERY MARGINAL PROBATIVE VALUE YOU MIGHT HAVE FROM THAT
20 IMPEACHMENT TESTIMONY, THAT YOU ALSO HAVE TO KEEP OUT THE FACT
21 OF THE ACPERA STATUS AND OUR LENIENCY AGREEMENT WHICH THEN OPENS
22 UP THE DOOR THAT THERE WAS A DOJ INVESTIGATION IN THE FIRST
23 PLACE.

24 **THE COURT:** RIGHT. I WOULD BE INCLINED TO LEAVE ALL
25 THAT OUT AND THE ONLY THING I COULD IMAGINE COMING IN WOULD BE

1 IF THE LENIENCY AGREEMENT SAID SOMETHING LIKE YOU MUST SUPPORT
2 OUR POSITION WHETHER IT'S TRUE OR NOT OR SOMETHING ACTUALLY
3 IMPEACHMENT. BUT IF IT SAYS, AS I WOULD IMAGINE, YOU MUST
4 TESTIFY TRUTHFULLY AT ALL TIMES AND THINGS LIKE THAT, THEN I
5 WOULDN'T SEE IT AS IMPEACHMENT.

6 **MR. SCARBOROUGH:** IT'S ACTUALLY --

7 **THE COURT:** OR IF IT CONTAINED AN ADMISSION OF GUILT.
8 YOU SAY IT DOESN'T.

9 **MR. SCARBOROUGH:** IT'S ACTUALLY RIGHT IN THE STATUTE
10 ITSELF IS WHAT ACPERA PROVIDES THAT SAMSUNG NEEDS TO DO IS RIGHT
11 IN THE ACPERA STATUTE ITSELF. AND IT BASICALLY SAYS YOUR
12 WITNESSES NEED TO --

13 **THE COURT:** I KNOW WHAT --

14 **MR. SCARBOROUGH:** -- TELL THE TRUTH.

15 **THE COURT:** RIGHT. THEY, I THINK, SUSPECT THAT THERE
16 MIGHT BE SOMETHING ELSE IN THERE. AND TO MAKE SURE THAT THEY'RE
17 COMFORTABLE, I'LL READ IT TO MAKE SURE THERE ISN'T, BUT I WOULD
18 NOT ANTICIPATE THERE'D BE ANYTHING IN THERE THAT WOULD BE
19 GROUNDS FOR IMPEACHMENT.

20 **MR. SCARBOROUGH:** OKAY. SO WE'LL SUBMIT THAT UNDER
21 SEAL, TOO, TO YOUR HONOR.

22 **THE COURT:** OKAY.

23 **MR. SCARBOROUGH:** AND ONE LAST THING, ON THE
24 UNCERTIFIED TRANSLATIONS POINT, IT'S A MINOR POINT, BUT WHAT IT
25 IS IS THAT THERE ARE 64 UNCERTIFIED TRANSLATIONS THAT ARE ON

1 PLAINTIFFS' TRIAL EXHIBIT LIST. THEY ALSO HAVE CERTIFIED
2 TRANSLATIONS FOR MANY OF THOSE AND WHAT THOSE WERE WERE
3 TRANSLATIONS THAT WERE CREATED AFTER THE FACT. NONE OF THESE
4 ARE CONTEMPORANEOUS BUSINESS DOCUMENTS THAT YOU WOULD
5 CROSS-EXAMINE A SAMSUNG WITNESS ON AND SAY, WELL, YOU SENT THIS
6 EMAIL THAT WAS IN KOREAN, AND YOU ALSO SENT THIS ENGLISH
7 TRANSLATION TO THE SAME PERSON. A DAY LATER, YOU SENT IT
8 INTERNALLY.

9 NONE OF IT IS GOING TO BE FODDER FOR
10 CROSS-EXAMINATION WITH ANY OF SAMSUNG WITNESSES. THESE ARE ALL
11 THINGS THAT WERE CREATED AFTER THE FACT, AFTER THE DOJ'S
12 INVESTIGATION WAS STARTED, AFTER THIS LITIGATION WAS FILED, AND
13 THEY WERE PROVIDED TO THE DOJ. SO IT'S GOING TO BE NOTHING BUT
14 CONFUSION TO THE JURY TO HAVE THESE ALTERNATE TRANSLATIONS
15 FLOATING AROUND THAT NONE OF THESE WITNESSES ARE GOING TO BE
16 ABLE TO SPEAK TO. AND WE REALLY OUGHT TO HAVE THE CERTIFIED
17 TRANSLATIONS BE THE GOVERNING DOCUMENTS FOR WHAT DOES THIS
18 DOCUMENT MEAN IN ENGLISH.

19 **THE COURT:** RIGHT. WELL, YEAH, I CAN'T IMAGINE THAT
20 IT WOULD BE A MAJOR POINT OF CROSS-EXAMINATION. IF THERE IS
21 SOMETHING THERE THAT THE PLAINTIFFS FEEL SHOWS SOMETHING ABOUT
22 THEIR STATE OF MIND OR THEIR CULPABILITY OR WHATEVER, THEN SHOW
23 IT TO THEM AND EXPLAIN WHAT IT IS AND WHY. BUT CERTAINLY WE'RE
24 NOT GOING TO SPEND THE TRIAL PARSING OUT THE DIFFERENCES IN
25 TRANSLATIONS BETWEEN 64 KOREAN DOCUMENTS.

1 SO I JUST DIDN'T WANT TO RULE IT OUT COMPLETELY. IF
2 THERE'S A SOMETHING IN THERE THAT'S MEANINGFUL IN SOME WAY, THEN
3 THE PLAINTIFFS NEED TO SHOW YOU WHAT IT IS AND IT MIGHT COME IN,
4 BUT --

5 **MR. SCARBOROUGH:** IF THEY ARE PRESUMPTIVELY OUT, I
6 THINK THAT WOULD BE --

7 **THE COURT:** THEY'RE NOT PRESUMPTIVELY IN OR OUT.
8 THEY'RE IN IF IT'S PROBATIVE OF SOMETHING MEANINGFUL.

9 **MR. SCARBOROUGH:** OKAY. THANK YOU, YOUR HONOR.

10 **THE COURT:** AND YOU NEED TO SHOW IT FIRST -- I
11 SUPPOSE TO THAT EXTENT, WE COULD SAY IT'S PRESUMPTIVELY OUT,
12 YES. YOU NEED TO SHOW IT FIRST BEFORE JUST DROPPING IT ON US.

13 **MR. SCARBOROUGH:** FAIR ENOUGH, YOUR HONOR.

14 **MR. RUBIN:** YOUR HONOR, I WANT TO ADDRESS A COUPLE
15 POINTS BRIEFLY. FIRST OF ALL, THE DRAM --

16 **THE COURT:** SO YOU'RE DOING ALL OF CYPRESS' ARGUMENTS
17 ON THE MOTIONS IN LIMINE.

18 **MR. RUBIN:** CORRECT.

19 **THE COURT:** OKAY.

20 **MR. RUBIN:** ON THE DRAM EVIDENCE, I UNDERSTAND THE
21 COURT'S POSITION IS THAT THE COURT BELIEVES THAT IT'S
22 INADMISSIBLE AGAINST CYPRESS BUT THAT A LIMITING INSTRUCTION
23 WILL REMEDY ANY PREJUDICE. AND I WISH THAT WE HAD THE
24 CONFIDENCE THAT YOU DID THAT THE JURY WILL COMPARTMENTALIZE THAT
25 EVIDENCE, BUT WE DON'T.

1 WE THINK THAT IN A CONSPIRACY CASE, WHEN EVIDENCE
2 COMES IN AGAINST THE COCONSPIRATOR, EVEN WITH THE LIMITING
3 INSTRUCTION THAT WE APPRECIATE YOU'LL VERY ENTHUSIASTICALLY MAKE
4 ON OUR BEHALF --

5 **THE COURT:** YOU CAN WRITE IT.

6 **MR. RUBIN:** AND WE APPRECIATE IT. WE WILL TAKE THE
7 PEN, BUT THAT -- IT'S JUST -- IT'S JUST INEVITABLE SPILLOVER.
8 AND IT'S UNFAIR SPILLOVER. WE HAD NOTHING TO DO WITH THAT CASE.
9 WE WERE NEVER PART OF THAT INDUSTRY.

10 AND SO WHAT YOU'RE ESSENTIALLY ASKING THE JURY TO DO
11 IS THE MENTAL GYMNASTICS OF SAYING, I HEARD ALL THIS VERY
12 INFLAMMATORY EVIDENCE ABOUT THE OTHER COCONSPIRATOR WHO'S AT
13 TRIAL. I HEARD THEY WERE IN ANOTHER CONSPIRACY. I
14 UNDERSTAND -- I BEEN TOLD BY THE JUDGE CYPRESS WASN'T IN IT, BUT
15 I BEEN TOLD I SHOULD SEPARATE THAT OUT ENTIRELY IN CONSIDERING
16 WHETHER IN THIS INDUSTRY THAT'S BEING DISCUSSED AT TRIAL, THERE
17 WAS ANOTHER CONSPIRACY.

18 I MEAN -- YOU KNOW, PUTTING IT ANOTHER WAY, IT TAKES
19 TWO TO TANGO. SO IF YOU LET THE EVIDENCE IN IN A JOINT TRIAL
20 AGAINST OUR COCONSPIRATOR, AND OUR COCONSPIRATOR -- THE JURY IS
21 TOLD THAT OUR COCONSPIRATOR -- THAT ESSENTIALLY THIS IS ITS MO
22 AS THE PLAINTIFFS WANT TO -- WANT TO TAR THEM WITH. AND WE ARE
23 THEN SITTING THERE EFFECTIVELY UNABLE TO DEFEND OURSELVES OTHER
24 THAN THIS LIMITING INSTRUCTION. IT'S INEVITABLE. IT'S
25 INEVITABLE THAT THE JURY WILL CARRY THAT OVER AGAINST US.

1 I DON'T THINK THAT THE HUMAN MIND CAN SEPARATE OUT IN
2 THE WAY THAT YOU'RE SUGGESTING. YOU'RE SUGGESTING THAT WE WOULD
3 GET SOME BENEFIT THAT YOU WEREN'T IN THAT.

4 BUT OF COURSE, WHAT THE PLAINTIFFS WANT THE JURY TO
5 DRAW FROM IT IS SAMSUNG WAS IN CONSPIRACY ONE, AND THEN SAMSUNG
6 RECRUITED CYPRESS TO COME INTO THE CONSPIRACY TWO.

7 THAT'S THE TAIN'T THAT THEY WANT TO GET FROM IT. SO
8 IN THIS INADMISSIBLE LIMITING INSTRUCTION, IT DOESN'T WORK. AND
9 THERE'S SUCH AN EASY SOLUTION, YOUR HONOR, BECAUSE IT'S A CIVIL
10 CASE. WE DON'T HAVE TO HAVE 28 PEOPLE. WE CAN GO RIGHT BACK TO
11 WHAT THE SEVENTH CIRCUIT DID IN HIGH FRUCTOSE CORN SYRUP.

12 THEY SAID THERE WAS A SIMILAR KIND OF SPILLOVER
13 EVIDENCE, ALMOST IDENTICAL CIRCUMSTANCES. ADM, A CEREAL
14 ANTITRUST VIOLATOR IN CONSPIRACY ONE, LYSINE; CONSPIRACY TWO
15 CITRIC ACID; AND THEN THERE WAS THIS HIGH FRUCTOSE CORN SYRUP
16 CASE.

17 AND JUDGE MIHM FROM MY HOMETOWN OF PEORIA, ILLINOIS,
18 SAID, I CAN'T ALLOW ALL OF THIS EVIDENCE TO COME IN AGAINST
19 CARGILL, WHO HAD NOTHING TO DO WITH THOSE OTHER TWO
20 CONSPIRACIES. WHAT I WOULD LIKE TO DO IS IMPANEL TWO JURIES,
21 AND WHEN THIS DRAM EVIDENCE COMES IN, I'M GOING TO ASK THAT
22 OTHER JURY TO EXCUSE ITSELF.

23 **THE COURT:** I JUST -- I DON'T HAVE A JURY ROOM
24 THAT -- I DON'T HAVE A COURTROOM OVER HERE THAT HAS TWO JURY
25 BOXES. I'D HAVE TO TRY IT IN SAN FRANCISCO IN THE CEREMONIAL

1 COURTROOM. IT WOULD BE HUGE, IT WOULD BE UNWIELDY.

2 **MR. RUBIN:** JUDGE MIHM HAD THE SAME PROBLEM.

3 **THE COURT:** I JUST DON'T THINK IT'S WORTH IT.

4 (SIMULTANEOUS COLLOQUY.)

5 **THE COURT:** ONE DEFENDANT WOULD BE HAPPY TO HAVE ALL
6 THIS BAD STUFF COMING IN ABOUT THE CODEFENDANT. THEY'D SAY, OH,
7 IT WAS ALL HIM. I'M JUST SITTING HERE IN THE CORNER --

8 **MR. RUBIN:** WELL, WITH ALL DUE RESPECT, IT'S WORTH IT
9 IN TERMS OF OUR RIGHTS TO A FAIR TRIAL.

10 **THE COURT:** I THINK IT WILL HELP YOU, BUT IN ANY
11 EVENT, I DON'T THINK IT WILL HURT YOU, AND I THINK A JURY
12 INSTRUCTION WILL CURE IT.

13 DID YOU WANT TO ADDRESS ANY OF OTHER --

14 (SIMULTANEOUS COLLOQUY.)

15 **THE COURT:** SO --

16 **MR. RUBIN:** WE'RE ALTERNATIVELY MAKING OUR MOTION FOR
17 TWO JURIES AND YOU KNOW THAT THAT'S ON THE RECORD, AND WE'VE
18 SOUGHT THAT.

19 **THE COURT:** RIGHT.

20 **MR. RUBIN:** THE OTHER ISSUE THAT I WANTED TO ADDRESS
21 BRIEFLY IS ON THIS ISSUE OF IMPEACHMENT. I JUST WANT TO CLARIFY
22 WHAT WE WERE SEEKING IN OUR RESPONSE TO SAMSUNG'S MOTION. WE
23 ARE NOT ASKING TO IMPEACH ON THE LENIENCY AGREEMENT ITSELF. ALL
24 WE ARE SAYING IS THERE IS A STATUTE HERE THAT SAMSUNG IS
25 OPERATING UNDER IN WHICH THERE ARE -- THEY ARE ATTEMPTING TO GET

1 THE BENEFIT OF COOPERATION WITH THE PLAINTIFFS. I THINK THE
2 STATUTE ACTUALLY READS IF THE PLAINTIFFS SATISFACTORILY
3 COOPERATE.

4 AND I UNDERSTAND THE COURT'S QUESTION OF WHAT DOES
5 THAT MEAN WHEN YOU GO TO TRIAL AND FIGHT LIABILITY AND FIGHT
6 DAMAGES. PUTTING THAT TO THE SIDE -- YOU KNOW, THAT'S AN OPEN
7 QUESTION. ALL WE'RE SAYING IS WE DON'T KNOW WHAT THE
8 CIRCUMSTANCES ARE. WE DON'T KNOW HOW SAMSUNG WITNESSES WILL
9 PRESENT THEMSELVES, BUT WE BELIEVE WE SHOULD HAVE THE RIGHT --
10 AND WE MAY NOT EXERCISE IT, BUT WE SHOULD NOT BE PRECLUDED AS OF
11 TODAY THAT AS A SAMSUNG WITNESS GETS UP AND TESTIFIES, THAT WE
12 WOULD BE ALLOWED, IN A JUDICIOUS FASHION, TO RAISE THE ISSUE
13 THAT THEY ARE -- HAVE MADE AN EFFORT OVER THE HISTORY OF THIS
14 CASE TO COOPERATE WITH THE PLAINTIFFS IN ORDER TO GET A
15 FINANCIAL BENEFIT.

16 THAT IS CLASSIC IMPEACHMENT. I MEAN, THAT IS NO
17 DIFFERENT THAN ANY OTHER AGREEMENT OR -- OR COOPERATION
18 AGREEMENT THAT THIS COURT, I'M SURE, OVER THE YEARS HAS HEARD
19 IMPEACHED UPON TIME AND TIME AGAIN.

20 YOU'RE TESTIFYING, YOU AS THE EMPLOYEE FOR THE
21 COMPANY COULD GET SOME FINANCIAL BENEFIT, OR THE COMPANY COULD
22 GET SOME FINANCIAL BENEFIT BY YOUR FAVORABLE TESTIMONY. WE
23 SHOULD HAVE THE RIGHT TO BRING THAT IN FRONT OF THE JURY.

24 **THE COURT:** IF YOU FIND SOMETHING THEY DO TO HELP THE
25 PLAINTIFFS, LET ME KNOW AND I'LL CONSIDER IT.

1 **MR. RUBIN:** WELL, FOR EXAMPLE, THEY'VE BEEN
2 INTERVIEWED. I MEAN, THEY MADE THEMSELVES AVAILABLE TO THEM.

3 **THE COURT:** YOU CAN ASK THAT.

4 **MR. RUBIN:** RIGHT. SO SPECIFIC QUESTIONS ABOUT
5 SPECIFIC THINGS THEY'VE DONE TO COOPERATE. AND BRINGING OUT
6 THAT THEY HAVE A FINANCIAL INCENTIVE.

7 **THE COURT:** NOT -- NOT THE -- NOT THAT AGREEMENT. I
8 DON'T KNOW WHAT YOUR ACRONYM IS.

9 **MR. RUBIN:** NOT ACPERA.

10 **THE COURT:** ACPERA.

11 **MR. RUBIN:** WELL, THAT'S A STATUTE, BUT WE'RE NOT
12 SAYING WE WANT TO IMPEACH ON THE LENIENCY AGREEMENT. WE WANT TO
13 HAVE THE RIGHT TO RAISE THE ISSUE THAT THEY ARE -- THAT THEY ARE
14 TESTIFYING AND -- AND THEIR BIAS -- THERE MAY BE A BIAS BECAUSE
15 BY COOPERATING WITH THE PLAINTIFF, BY SAYING THINGS THAT ON THE
16 MARGIN MAY BE FAVORABLE TO PLAINTIFFS, THEY MAY BE FAVORABLE TO
17 PLAINTIFFS BECAUSE IT SHEDS AN UNFAVORABLE LIGHT ON US. WE
18 SHOULD HAVE A CHANCE TO BRING THAT TO THE JURY'S ATTENTION,
19 BECAUSE OTHERWISE YOU'RE EXCLUDING CLASSIC BIAS EVIDENCE.

20 I MEAN, THAT'S WHERE BIAS GOES. WHAT FINANCIAL
21 INTEREST DOES SOMEBODY HAVE IN TESTIFYING, SO -- WE CAN DO IT IN
22 A WAY THAT AVOIDS GETTING INTO THE ISSUES OF WHY THE STATUTE IS
23 IN -- IS TRIGGERED, THAT -- YOU KNOW, AMNESTY -- WE DON'T HAVE
24 AN INTEREST NECESSARILY IN BRINGING THE ENTIRE SRAM
25 INVESTIGATION INTO THE CASE.

1 BUT NARROWLY CONFINED, WE CERTAINLY HAVE A RIGHT TO
2 DO THAT. AND APROPOS OF THAT OR RELATED TO THAT, I THINK, YOU
3 RULED ON SETTLEMENT -- YOU TALKED ABOUT SETTLEMENT AGREEMENTS
4 FOR THIRD PARTIES. IT'S THE SAME POINT.

5 THEY HAVE COOPERATION PROVISIONS IN ALL THEIR
6 SETTLEMENT AGREEMENTS. SO IF A HYNIX WITNESS OR A --

7 **THE COURT:** THEY WHO?

8 **MR. RUBIN:** PLAINTIFFS DO.

9 **THE COURT:** OH.

10 **MR. RUBIN:** WHEN PLAINTIFFS SETTLED WITH THE OTHER
11 SETTLING DEFENDANTS, THEY, YOU KNOW, SETTLED, AND THEY SAID, YOU
12 SHALL COOPERATE WITH PLAINTIFFS.

13 NOW, IF SOMEBODY FROM HYNIX OR SOMEBODY FROM RENESAS
14 SHOWS UP, AND IN OUR TRIAL -- IN OUR STRATEGIC WISDOM, WE THINK
15 THAT THEY SAID SOMETHING DAMAGING THAT WE THINK THAT WE WANT TO
16 RAISE THAT COOPERATION PROVISION, THAT'S CLASSIC IMPEACHMENT.

17 I DON'T KNOW OF ANY COURT WHERE YOU WOULDN'T BE
18 ALLOWED TO SAY, AREN'T YOU TESTIFYING PURSUANT TO COOPERATION
19 AGREEMENT WITH THE PLAINTIFFS. THAT'S ALL WE'RE SAYING THAT WE
20 HAVE THE RIGHT TO DO.

21 WILL IT EVER COME UP IN THE TRIAL? DON'T KNOW. BUT
22 WE CERTAINLY SHOULDN'T BE PRECLUDED TODAY. THE COURT SHOULD
23 CONSIDER THE CIRCUMSTANCES AT THE TIME.

24 **THE COURT:** WELL, IF YOU WANT TO MAKE AN OFFER OF
25 PROOF AS TO THE WAYS IN WHICH YOU THINK SAMSUNG HAS COOPERATED

1 WITH THE PLAINTIFFS AND SOME WAY IN WHICH YOU COULD EXPLAIN HOW
2 THAT MIGHT BENEFIT THEM WITHOUT OPENING THE DOOR TO THE WHOLE
3 SRAM INVESTIGATION, I'LL TAKE A LOOK AT IT.

4 **MR. RUBIN:** OKAY. WE'LL DO THAT.

5 **THE COURT:** OKAY.

6 **MR. WILLIAMS:** STEVE WILLIAMS FOR THE DIRECT
7 PLAINTIFFS. JUST A FEW POINTS. I'LL BE BRIEF.

8 FIRST NOT ON THE MOTIONS IN LIMINE REALLY
9 SPECIFICALLY, BUT I'D LIKE TO ASK THE COURT TO RESERVE JUDGMENT
10 ON ONE ISSUE. WE TALKED ABOUT THE PASS ON/PASS THROUGH, HOW
11 DOES THAT WORK.

12 CYPRESS HAD THE OPPORTUNITY TO BRIEF THE ISSUE. WE
13 HAVEN'T. THAT CAME IN LATE IN THE DAY. AND I THINK BOTH WE AND
14 THE INDIRECT PLAINTIFFS WOULD LIKE THE OPPORTUNITY BEFORE OUR
15 NEXT TRIAL CONFERENCE TO SUBMIT A BRIEF ON THAT.

16 **THE COURT:** WELL, IF WE TRY IT THE WAY I'M THINKING
17 OF, IT WON'T COME UP.

18 **MR. WILLIAMS:** IT WON'T COME UP RIGHT AWAY, BUT IT'S
19 GOING TO COME UP. IT'S A VERY IMPORTANT ISSUE.

20 **THE COURT:** IT WILL NEVER BE A JURY ISSUE. IT WILL
21 BE A BENCH ISSUE. WE'LL HAVE TO APPORTION IT SOMEHOW, BUT I
22 DON'T SEE IT AS EVER BEING A JURY ISSUE.

23 **MR. WILLIAMS:** I THINK THAT MIGHT BE. I THINK -- OUR
24 VIEW IS SIMPLY THE SUPREME COURT DECISIONS ON THIS, WE THINK,
25 ARE -- ACTUALLY PROVIDE THAT THERE CAN BE DUAL RECOVERIES

1 BECAUSE OF THE PURPOSES OF THE ANTITRUST LAWS, AND THERE'S A
2 CASE ON POINT. WE'D JUST LIKE THE OPPORTUNITY TO GIVE THE COURT
3 SOMETHING TO ADDRESS.

4 **THE COURT:** WELL, YEAH, YOU ALL BETTER THINK ABOUT
5 THIS APPORTIONMENT ISSUE AND BRIEF THAT BECAUSE IF THERE'S SOME
6 JURY ISSUE FLOATING AROUND IN THERE, I NEED TO KNOW IT. I'M
7 JUST ASSUMING THAT IT WOULD BE AN ISSUE THE COURT WOULD HAVE TO
8 APPORTION IN SOME FASHION.

9 **MR. WILLIAMS:** THERE'S AN ISSUE, AND I THINK IT WOULD
10 BE VERY BENEFICIAL FOR EVERYONE FOR US TO BE ABLE TO BRIEF THAT
11 TO YOU.

12 **THE COURT:** OKAY. WELL, EVERYBODY SHOULD DO THAT,
13 THEN. WE SHOULD MAKE A LIST OF EVERYTHING YOU'RE GOING TO DO
14 FOR NEXT TIME.

15 **MR. WILLIAMS:** OKAY.

16 **THE COURT:** AND THAT'S ONE OF THEM, IS TO FIGURE --
17 AND THAT TIES IN AS WELL TO THE ISSUE ABOUT THE CLAIMS PROCEDURE
18 AND CY PRES IDEAS AND ALL OF THAT. ALL OF THAT NEEDS TO BE
19 WRITTEN UP AND TO THE EXTENT IT'S AGREED UPON, HAVE IT ALL
20 SIGNED OFF ON AND STIPULATE TO.

21 TO THE EXTENT IT TURNS OUT THAT THERE ISN'T AGREEMENT
22 OR UNDERSTANDING, THEN I'M GOING TO HAVE TO DECIDE IT. AND TO
23 THE EXTENT IT'S A JURY ISSUE, I REALLY NEED TO KNOW THAT.

24 **MR. WILLIAMS:** ON THE ACPERA LETTER, WE HAD AGREED
25 WITH WHAT THE COURT SUGGESTED, WHICH IS TO GIVE THAT TO YOU TO

1 REVIEW. THE ONLY THING WE'D SAY IN ADDITION WAS THERE'S NO
2 REASON IT SHOULD BE KEPT FROM US. THEY'VE DISCLOSED THAT THEY
3 HAVE THE AGREEMENT. IT'S NOT PRIVILEGED FOR ANY REASON.
4 THEY'RE SEEKING BENEFITS IN RELATION TO THE CLASS BY VIRTUE OF
5 THE AGREEMENT.

6 WE THINK IT SHOULD BE GIVEN TO US AS WELL. IT CAN BE
7 CONFIDENTIAL. IT CAN BE DESIGNATED PURSUANT TO A PROTECTIVE
8 ORDER, BUT THERE'S NO RATIONALE FOR IT TO BE KEPT FROM US AT
9 THIS POINT.

10 THE LAST POINT IS RELATIVELY MINOR, BUT THERE'S A
11 MOTION IN LIMINE THAT RELATED TO OTHER INDUSTRIES, WHICH THE
12 COURT GRANTED. AS WE UNDERSTOOD THE MOTION WAS TO PRECLUDE
13 EVIDENCE OF INVESTIGATIONS OF OTHER INDUSTRIES. TO THE EXTENT
14 IT'S JUST EVIDENCE THAT REFERS TO FLASH OR DRAM, I DON'T THINK
15 THAT WAS THE INTENTION. WE JUST WANT TO MAKE SURE THAT THAT'S
16 THE CASE BECAUSE THAT WOULD BE A NIGHTMARE FOR TRIAL
17 PRESENTATION IN TERMS OF REDACTION OF DOCUMENTS AND INFORMATION.

18 THIS IS SAMSUNG NO. 4.

19 **THE COURT:** RIGHT. YEAH, I'M NOT WORKING FROM THE
20 MOTION. I'M WORKING FROM --

21 (SIMULTANEOUS COLLOQUY.)

22 **THE COURT:** -- WHAT IT WAS. AND WHAT I WROTE DOWN
23 WAS EVIDENCE OF CONDUCT OF OTHER NON-SRAM, I GUESS,
24 INVESTIGATIONS.

25 **MR. WILLIAMS:** RIGHT. AND IF IT'S INVESTIGATIONS,

1 WE -- WE AGREED THAT WE WEREN'T SEEKING --

2 **MR. SCARBOROUGH:** AND I APOLOGIZE IF THERE WAS ANY
3 AMBIGUITY. THE INTENT WAS, YOUR HONOR, THAT IT BE DIRECTED TO
4 BOTH THE FACT OF INVESTIGATIONS IN OTHER CASE, THE FACT THAT
5 THERE ARE CLASS ACTIONS GOING ON WITH RESPECT TO LCD, OR THERE
6 WAS A PRIOR FLASH CLASS ACTION GOING ON, OR ANY OF THE
7 UNDERLYING CONDUCT.

8 IT WAS TO EXCLUDE, YOU KNOW LCD EVIDENCE, CRT
9 EVIDENCE, FLASH EVIDENCE. NONE OF THAT WOULD COME IN IN ANY
10 WAY, AND WE CAN OBVIOUSLY WORK WITH THE PLAINTIFFS. DO WE THINK
11 THAT THERE ARE TRIAL EXHIBITS THAT HAVE SIGNIFICANT REFERENCES
12 TO THOSE OTHER PRODUCTS THAT WE NEED TO BE REDACTED? I DON'T
13 THINK THAT THERE REALLY ARE.

14 I THINK THAT THERE CAN BE STRAY REFERENCES THAT ARE
15 JUST GOING TO GO OVER PEOPLE'S HEADS, AND AS LONG AS THERE'S NOT
16 ARGUMENT THAT, HEY, THERE'S SOME KIND OF MISDEEDS GOING ON IN
17 THESE OTHER INDUSTRIES, THEN I THINK WE CAN PRESERVE THE MOTION
18 IN LIMINE. AND THAT'S A COMPLETE BAR ON EVIDENCE COMING IN AS
19 TO THOSE OTHER -- OTHER INDUSTRIES.

20 **MR. WILLIAMS:** I THINK WE'RE IN AGREEMENT ON THIS.

21 **THE COURT:** OKAY.

22 **MR. WILLIAMS:** SO I JUST WANTED TO MAKE SURE WE WERE.

23 **THE COURT:** OKAY.

24 **MR. WILLIAMS:** THANK YOU.

25 **THE COURT:** WELL, THE THING THAT I WASN'T CLEAR FROM

1 YOU ALL IS WHETHER YOU HAVE SOME OBJECTION TO THEIR NO. 5.

2 **MR. WILLIAMS:** WE DID. AND I APOLOGIZE TO THE COURT
3 IF IT WASN'T CLEAR. THE ISSUE THERE WAS WE'RE NOT SEEKING TO
4 HAVE LEVY OFFER NEW OPINIONS OR DIFFERENT OPINIONS, BUT THE WAY
5 IT'S DRAFTED SEEMS TO BE SAYING NO OTHER EVIDENCE IN THE COURSE
6 OF THE CASE CAN COME IN THAT IN ANY WAY CONFLICTS WITH WHAT HE'S
7 SAYING. THAT'S PRETTY BROAD, SO WE'RE NOT GOING TO COME IN
8 AND -- IF LEVY --

9 **THE COURT:** WHAT THEY REALLY --

10 **MR. WILLIAMS:** -- SAID, I DID NOT FIND FOR THIS
11 PERIOD AN OVERCHARGE FOR SRAM, WE'RE NOT GOING TO COME OUT NOW
12 AND SAY, OKAY, HERE'S SOME NEW EVIDENCE THAT PROVES THERE WAS.

13 **THE COURT:** RIGHT. THAT'S WHAT THEY'RE GETTING AT, I
14 BELIEVE.

15 **MR. SCARBOROUGH:** YES.

16 (SIMULTANEOUS COLLOQUY.)

17 **THE COURT:** AND YOU'RE NOT GOING TO DO.

18 **MR. WILLIAMS:** WE ARE NOT GOING TO INTRODUCE ANYTHING
19 TO CONTRADICT WHAT LEVY'S OPINED.

20 **THE COURT:** OR EVIDENCE TO TRY TO PROVE SOMETHING
21 THAT LEVY SAID DIDN'T HAPPEN.

22 **MR. WILLIAMS:** CORRECT.

23 **THE COURT:** SO DOES THAT MEAN I DON'T HAVE TO DECIDE
24 THE PSRAM MOTION?

25 **MR. WILLIAMS:** THE PSRAM MOTION, YOUR HONOR, IN MY

1 EYES IS SIMILAR TO THE ASPECTS THAT YOU'VE RULED ON AS IT
2 RELATES TO THE PERIODS FOR WHICH LEVY DIDN'T SAY THAT CONSPIRACY
3 WAS MOST EFFECTIVE. MEANING --

4 **THE COURT:** THAT'S YOUR ARGUMENT, BUT I'M NOT SURE I
5 AGREE WITH YOU. AND IF I DON'T HAVE TO DECIDE IT, I WON'T AND
6 I'D RATHER NOT. BUT IT WON'T NECESSARILY COME OUT THE SAME WAY.

7 **MR. WILLIAMS:** UNDERSTOOD.

8 **THE COURT:** SO DO I HAVE TO DECIDE IT OR NOT?

9 **MR. WILLIAMS:** I DON'T THINK YOU NEED TO DECIDE THAT
10 MOTION, YOUR HONOR.

11 **THE COURT:** OKAY. GOOD.

12 **MR. WILLIAMS:** OKAY.

13 **THE COURT:** IP'S -- OR I GUESS YOU -- DID YOU ALREADY
14 TALK?

15 **MR. MICHELETTI:** I JUST WOULD WANT TO JOIN IN THE
16 REQUEST TO BRIEF THE ALLEGATION ISSUE. WE DISAGREE THAT ANY
17 ALLOCATION IS NECESSARY UNDER SUPREME COURT AUTHORITY, AND WE'LL
18 ADDRESS IT IN THE BRIEF THAT WE'VE DISCUSSED, BUT I DID WANT TO
19 STATE FOR THE RECORD THAT WE DISAGREE THAT--

20 **MR. WILLIAMS:** WE DISAGREE THAT THERE'S ANY
21 REQUIREMENT THAT THE COURT ALLOCATE AS BETWEEN INDIRECT
22 PURCHASERS AND DIRECT PURCHASERS, TWO POTS, ONE POTS, EITHER OF
23 MONEY.

24 **THE COURT:** SO THEY PAY DOUBLE AND YOU EACH GET A
25 FULL SHARE?

1 **MR. MICHELETTI:** I THINK THE --

2 **THE COURT:** AND THEN TRIPLE THAT?

3 **MR. MICHELETTI:** YES.

4 **THE COURT:** SO THAT'S SIX TIMES? SOUNDS GOOD.

5 (LAUGHTER.)

6 **THE COURT:** OKAY. WHAT ELSE?

7 **MR. SCARBOROUGH:** YOUR HONOR, JUST BACK TO THE PSRAM
8 ISSUE HAVING HEARD WHAT MR. WILLIAMS JUST SAID, I GUESS I DON'T
9 UNDERSTAND WHY WE WOULD NOT JUST GO AHEAD AND OFFICIALLY
10 ELIMINATE PSRAM FROM THE DIRECT PURCHASER CASE WITH A RULING
11 GRANTING SUMMARY JUDGMENT.

12 **THE COURT:** WE ARE. THAT'S WHAT I UNDERSTOOD HIM TO
13 SAY.

14 **MR. SCARBOROUGH:** RIGHT, BUT WHY NOT GO AHEAD AND
15 HAVE AN ORDER ISSUED THAT SAYS SUMMARY JUDGMENT IS GRANTED AS TO
16 PSRAM, WHICH WAS THE INTENT OF OUR SUMMARY JUDGMENT MOTION IN
17 THE FIRST PLACE.

18 **THE COURT:** OKAY.

19 ON STIPULATION, YES.

20 **MR. SCARBOROUGH:** OKAY. AND YOUR HONOR HAD ALSO
21 MENTIONED YOU MIGHT HAVE SOME FOLLOW-UP QUESTIONS WITH RESPECT
22 TO THE FTAIA MOTIONS?

23 **THE COURT:** YEAH, I DO. MAYBE WE SHOULD -- WE EITHER
24 HAVE TO TAKE A BREAK OR AGREE TO BE DONE SOON.

25 **MR. COTCHETT:** I THINK WE'RE DONE UNLESS YOU HAVE

1 ANYTHING.

2 **MR. WILLIAMS:** THE COURT HAD SOME QUESTIONS.

3 **THE COURT:** THE TWO THINGS THAT I THINK I WOULD WANT
4 TO DEAL WITH -- AND MAYBE IT COULD BE BRIEF -- WOULD BE AN
5 AGENDA FOR THE NEXT PRETRIAL CONFERENCE, AND DEADLINES, BUT
6 MAYBE YOU COULD WORK THAT OUT AMONGST YOURSELVES.

7 WHAT I WOULD LIKE IS TO HAVE NEW JURY INSTRUCTIONS,
8 NEW VERDICT FORMS, AN ANSWER ON THIS DAMAGES QUESTION, ANYTHING
9 ELSE YOU CAN THINK OF THAT MIGHT COME UP.

10 **MR. COTCHETT:** WE'LL STREAMLINE THIS.

11 **THE COURT:** -- MET AND CONFERRED AND THEN BRIEFED IN
12 SOMETIME THAT I WILL HAVE A CHANCE TO READ IT BEFORE THE NEXT
13 PRETRIAL CONFERENCE.

14 **MR. COTCHETT:** WHICH I THINK IS ON THE 18TH.

15 **THE COURT:** IS IT?

16 **MR. COTCHETT:** JANUARY --

17 **MR. McGINNIS:** THAT IS, YOUR HONOR. MY QUESTION IS,
18 YOU HAD ALLUDED EARLIER, YOUR HONOR, TO TIME FOR THE TRIAL AND
19 THAT'S A PRETTY CRITICAL ISSUE --

20 **THE COURT:** THAT IS WHAT?

21 **MR. McGINNIS:** TIME. YOU SAID THE TRIAL IS GOING TO
22 BE TIMED.

23 **THE COURT:** RIGHT.

24 **MR. McGINNIS:** AND SO WE'RE WONDERING HOW MUCH.

25 **THE COURT:** WELL, I'M -- SIX WEEKS.

1 **MR. McGINNIS:** -- YOUR HONOR OUGHT TO DISCUSS ON
2 JANUARY 18TH.

3 **THE COURT:** OH, IF YOU WANT TO TALK ABOUT AN
4 ALLOCATION --

5 **MR. McGINNIS:** 'CAUSE I DON'T THINK SIX WEEKS,
6 FRANKLY, IS ENOUGH, YOUR HONOR, GIVEN THE FACT THAT YOUR HONOR
7 HAS INDICATED THAT SOME ASPECT OF DRAM IS GOING TO COME IN. THE
8 FACT THAT THERE ARE 32 WITNESSES ON THEIR WITNESS LIST AND A
9 THOUSAND DOCUMENTS ON THEIR TRIAL EXHIBIT LIST.

10 **THE COURT:** WELL, PEOPLE ALWAYS PUT DOWN WAY MORE
11 THAN THEY REALLY --

12 **MR. McGINNIS:** WELL, I HAVE --

13 (SIMULTANEOUS COLLOQUY.)

14 **MR. McGINNIS:** THEY'RE NOT -- I DON'T THINK THEY'RE
15 PLAYING A GAME WITH US, YOUR HONOR. I THINK THAT THEY IN GOOD
16 FAITH INTEND TO USE LOTS OF THOSE DOCUMENTS.

17 **THE COURT:** WELL, THEY'LL ONLY USE AS MANY AS THEY
18 CAN GET IN IN THE TIME ALLOTTED, AND JURIES DON'T LIKE TO HAVE
19 THE READ A LOT OF DOCUMENTS SO WE DON'T WANT A LOT OF DOCUMENTS.

20 OH, ANOTHER THING IS THE DISCOVERY EXCERPTS. I NEED
21 DISCOVERY EXCERPTS BEFORE THE NEXT PRETRIAL.

22 **MR. COTCHETT:** I THINK THEY'RE DUE ON THE 4TH.

23 **THE COURT:** ARE THEY OKAY?

24 **MR. COTCHETT:** THAT'S WHAT I THOUGHT.

25 **MR. SCARBOROUGH:** THAT'S RIGHT, YOUR HONOR.

1 **THE COURT:** -- HOW TO DO THOSE WITH -- WE NEED THE
2 DEPO AND WE NEED PLAINTIFFS' DESIGNATIONS AND DEFENDANTS'
3 DESIGNATION AND OBJECTIONS TO PLAINTIFFS' DESIGNATION, COUNTER
4 DESIGNATIONS, ALL COLOR CODED ON ONE SET SO THAT I CAN READ THEM
5 AND RULE ON THEM IN THE MARGIN.

6 **MR. McGINNIS:** YES, YOUR HONOR.

7 **THE COURT:** OKAY. BUT TRY TO HAVE THIS -- I MEAN,
8 YOU KNOW, THEY HATE. THE VIDEOS AREN'T SO BAD, THEY ACTUALLY
9 KIND OF LIKE WATCHING INDIVIDUAL, BUT IT'S SORT OF LIKE
10 TELEVISION BY DEPO READ IS HORRIBLE DOCUMENTS AREN'T MUCH BETTER
11 AND DISCOVERY EXCERPTS ARE TERRIBLE.

12 SO TO THE EXTENT YOU HAVE THOSE, YOU SHOULD TRY TO
13 WRITE THEM IN PLAIN ENGLISH AND NOT TRY TO READ ADMISSIONS AND
14 INTERROGATORIES AND THINGS OUT TO THEM. TRY TO PUT THE
15 STIPULATION AS TO WHAT WAS ACTUALLY SAID THAT CAN BE READ TO
16 THEM IN ENGLISH.

17 **MR. COTCHETT:** BUT MY NOTES SHOW THAT'S ALL DUE ON
18 THE 4TH, AND WE'RE WILLING TO HAVE A VERY HAPPY HOLIDAY DOING
19 ALL OF THAT IN COLORS.

20 **THE COURT:** OKAY. YEAH, THAT WAS WHAT I WAS GOING TO
21 SAY. ALL OF THESE BRIEFINGS AND THINGS, IF I COULD HAVE
22 EVERYTHING BY THE 4TH, THAT WILL BE GREAT. THAT WILL GIVE ME
23 TWO WEEKS. IF NOT --

24 **MR. COTCHETT:** IT'S DUE THE 4TH.

25 **MR. McGINNIS:** WE MIGHT BEG FOR MERCY AT LEAST ON THE

1 BRIEFING TO, LET'S SAY, THE 11TH?

2 **THE COURT:** WELL, FOR WHAT? EVERYTHING OR --

3 **MR. SCARBOROUGH:** THESE ISSUES OF APPORTIONMENT AND,
4 YOU KNOW, WHAT WE NEED TO DO WITH RESPECT TO DAMAGES AND PERHAPS
5 INDIVIDUAL DAMAGES SHOWINGS. THOSE MAY BE SLIGHTLY MORE COMPLEX
6 ISSUES. WE'RE ALONG -- WE'RE FAIRLY FAR ALONG WITH THE TRIAL
7 EXHIBITS AND THE DESIGNATIONS. WE'VE ALREADY EXCHANGED
8 TENTATIVE VERSIONS OF THOSE. BUT THE BRIEFING MIGHT BE A MORE
9 COMPLEX PROCESS.

10 **MR. MCGINNIS:** ON THE -- ON A PLUS NOTE, YOUR HONOR,
11 I'M QUITE CERTAIN THAT WE CAN AGREE ON WHAT WOULD BE APPROPRIATE
12 AGENDA FOR THE COURT ON THAT DATE, AND I'M SURE COULD SUBMIT IT
13 AHEAD OF TIME, WHENEVER THE COURT WANTS.

14 **THE COURT:** WELL, HOW ABOUT THE 7TH?

15 **MR. MCGINNIS:** THAT'D BE FINE, YOUR HONOR.

16 **THE COURT:** YEAH, SO TRY NOT TO HAVE TOO MANY
17 EXHIBITS. TRY TO HAVE -- USE THE SET THAT PLAINTIFFS WANT AS
18 THE SET. I DON'T WANT TWO COPIES OF ANY EXHIBIT, SO IF THEY'RE
19 USING IT, THEN YOU USE THEIRS. DON'T GIVE ME ANOTHER COPY OF IT
20 UNLESS THERE'S SOME MATERIAL DIFFERENCE.

21 TRY TO REACH A STIPULATION ON THESE CUSTODIANS AND
22 THINGS LIKE THAT. I CERTAINLY DON'T WANT TO HAVE --

23 **MR. COTCHETT:** WE WILL, YOUR HONOR.

24 **THE COURT:** -- CUSTODIANS OF RECORD.

25 I THINK WE CAN DO IT IN SIX WEEKS. IF YOU REALLY

1 THINK WE CAN'T, YOU'LL HAVE TO MAKE A MOTION FOR MORE TIME. BUT
2 THAT'S MY PLAN AND JUST DIVIDING IT UP AND YOU GET -- YOU GET
3 WHAT YOU GET.

4 **MR. COTCHETT:** AND THAT'S A FOUR-DAY WEEK.

5 **THE COURT:** FIVE DAY.

6 **MR. COTCHETT:** OH, FIVE DAY. WE CAN DO IT EASILY
7 THEN, YOUR HONOR, STANDING ON OUR HEAD.

8 **THE COURT:** WHAT ELSE?

9 YEAH, SO MAYBE IF YOU COULD SIT DOWN WITH EACH
10 OTHER --

11 **MR. COTCHETT:** WE WILL.

12 **THE COURT:** -- AND JUST MAKE SURE THAT YOUR AGENDA
13 INCLUDES EVERYTHING THAT NEEDS TO BE DECIDED ALONG WITH A
14 SCHEDULE FOR WHEN IT ALL GETS BRIEFED AND WHEN I GET IT.

15 **MR. MCGINNIS:** I'M SURE WE CAN DO THAT.

16 **THE COURT:** THEN WHAT ARE YOU GOING TO DO ABOUT
17 TRYING TO SETTLE THE CASE?

18 **MR. COTCHETT:** WE'RE WORKING ON THAT.

19 **THE COURT:** BUT THE SAMSUNG --

20 (SIMULTANEOUS COLLOQUY.)

21 **MR. COTCHETT:** THERE IS A MEDIATOR IN PLACE, AND
22 WE'VE BEEN TALKING TO THE MEDIATOR WHO TELLS US THAT THEY'RE
23 WORKING WITH THE OTHER SIDE. SO WHEN COUNSEL SAID HE HASN'T
24 HEARD MUCH, WE'LL JUST SAY THAT THE MEDIATOR SPEAKS LOUDLY OR
25 WHAT-HAVE-YOU. WE'RE DEALING WITH VERY DISTINGUISHED,

1 EXPERIENCED COUNSEL, AND I'M SURE WE'RE GOING TO BE ABLE TO WORK
2 OUT ALL THESE TRIAL PROBLEMS AND HOPEFULLY RESOLVE IT.

3 **THE COURT:** SO --

4 **MR. COTCHETT:** IT'S A HOLIDAY SEASON, I MEAN. MY
5 GOSH.

6 **THE COURT:** YOU THINK THEY'LL BE IMBUED WITH THE
7 SPIRIT OF GENEROSITY?

8 **MR. COTCHETT:** I THINK THEY WILL. I DO.

9 **THE COURT:** YOU'RE STILL USING JUDGE WEINSTEIN.

10 **MR. COTCHETT:** YES, WE ARE.

11 **THE COURT:** WELL, I'M CONCERNED BY THE FACT THAT
12 COUNSEL DOESN'T SEEM TO BE AWARE OF THIS. WHAT SHALL I DO?
13 SHALL I ORDER YOU TO HAVE A JOINT MEETING OR A CONFERENCE CALL
14 WITH JUDGE WEINSTEIN JUST TO MAKE SURE THAT EVERYONE IS AWARE
15 THAT WE'RE TRYING TO SETTLE THE CASE?

16 **MR. COTCHETT:** THAT WOULD BE FINE.

17 **MR. MCGINNIS:** THAT'D BE FINE WITH US, YOUR HONOR.

18 **THE COURT:** OKAY. SO WHY DON'T --

19 (SIMULTANEOUS COLLOQUY.)

20 **THE COURT:** WHY DON'T YOU ALL WITHIN THE NEXT WEEK
21 HAVE A JOINT CONFERENCE CALL AT LEAST WITH JUDGE WEINSTEIN
22 EXPLAINING WHAT THE ANTICIPATED PROCESS OF THE SETTLEMENT TALKS
23 WILL BE AND WHO'S SPEAKING TO WHOM AND WHEN. IS THAT --

24 **MR. COTCHETT:** YES.

25 **MR. MCGINNIS:** CERTAINLY, YOUR HONOR, WE CAN DO THAT.

1 **MR. COTCHETT:** YES.

2 **THE COURT:** INCLUDING BOTH SAMSUNG AND CYPRESS AND
3 THE DIRECTS AND THE INDIRECTS AND BE GUIDED BY HIS VIEWS AS TO
4 WHAT SHOULD BE DONE, WHETHER YOU SHOULD HAVE AN IN-PERSON
5 MEETING WITH EVERYBODY COMING, OR WHETHER HE SHOULD SPEAK WITH
6 EVERYONE ON THE PHONE SERIATIM, OR WHATEVER SHOULD BE DONE, DO
7 WHAT HE SAYS.

8 OKAY?

9 **MR. McGINNIS:** OKAY, YOUR HONOR. OF COURSE.

10 **THE COURT:** OKAY. WELL, THE ONLY OTHER THING IS THIS
11 FTAIA MOTION WHICH I'M HAVING SOME DIFFICULTIES WITH. WHAT DID
12 PLAINTIFFS HAVE TO SAY ABOUT DEFENDANTS' ARGUMENTS THAT --

13 WELL, LET ME SAY THIS: I DO THINK THAT THE ACT IS
14 JURISDICTIONAL AT THIS MOMENT. I THINK THAT MIGHT TURN OUT TO
15 BE WRONG. IT MIGHT CHANGE, BUT IT'S NOT FOR THIS COURT TO
16 CHANGE IT. IT MAY BE THAT WHEN THIS NINTH CIRCUIT GETS THIS
17 CASE, IF IT DOES, IT MIGHT TAKE THIS OPPORTUNITY TO -- TO SAY
18 THAT ARBAR (PHONETIC) CHANGED THE LANDSCAPE AND THAT IT'S NOT
19 JURISDICTIONAL. BUT FOR THE MOMENT, I SEE NO ALTERNATIVE BUT TO
20 TREAT IT AS JURISDICTIONAL.

21 THAT BEING SAID, WE NEED TO THEN FIGURE OUT HOW
22 FACTUAL DISPUTES ARE DECIDED IN A MOTION TO DISMISS, AND I -- I
23 GUESS THIS IS PROBABLY WHAT I SAID BEFORE, BUT I'M STILL
24 THINKING THIS IN LARGE PART, THAT IF THERE'S FACTUAL DISPUTES ON
25 A MOTION TO DISMISS, THE COURT HAS TO RESOLVE THEM.

1 IF THEY'RE -- IF THE PLAINTIFF SAYS SOMETHING AND THE
2 DEFENDANT SAYS NOTHING, I BELIEVE THE PLAINTIFF. IF THE
3 PLAINTIFF SAYS SOMETHING AND THE DEFENDANT SAYS SOMETHING, I
4 WOULD HAVE TO PERHAPS HAVE AN EVIDENTIARY HEARING ON THE POINT.
5 IF I'M GOING TO HAVE AN EVIDENTIARY HEARING, I MIGHT AS WELL DO
6 IT AT THE SAME TIME AS I'M TRYING THE CASE, AND IF THERE ARE
7 ISSUES THAT NEED TO GO TO ME TO DETERMINE JURISDICTION THAT
8 DON'T GO TO THE JURY, THEN WE'LL TAKE THOSE THINGS IN THE
9 AFTERNOON OR WHATEVER, AND I WILL, BEFORE THE JURY DECIDES OR
10 MAYBE EVEN AFTER THE JURY DECIDES, RESOLVE THOSE FACTUAL
11 DISPUTES AND DETERMINE WHETHER I HAVE JURISDICTION OVER THESE
12 THINGS.

13 THAT APPROACH IS ALSO COUNSELED BY THE LAW THAT SAYS
14 IF JURISDICTIONAL FACTUAL ISSUES ENTWINE WITH THE ISSUES ON THE
15 MERITS, THAT IT CAN BE DEFERRED TO TRIAL. SO I THINK THAT
16 THAT'S GENERALLY THE APPROACH I WOULD TAKE.

17 NOW, TO THE EXTENT THAT THERE ARE MATTERS OF LAW THAT
18 COULD BE DECIDED WITHOUT ANY FACTUAL DISPUTES, MAYBE I DO HAVE
19 TO DECIDE THOSE, AND I'M TROUBLED BY SOME OF THEM.

20 ONE PROBLEM I HAVE IS THE -- WELL, I TEND TO THINK
21 THAT THE "BILLED TO U.S." IS QUITE LIKELY TO HAVE AN IMPACT ON
22 DOMESTIC PRICES OR WHATEVER. I HAVE MORE TROUBLE WITH THE
23 "BILLED FROM U.S. AND SHIPPED FROM U.S." AND ONE OF THE BIG
24 PROBLEMS I HAVE WITH THAT IS WHO IS IT BILLED TO AND SHIPPED TO?
25 AND IF IT'S BILLED TO AND SHIPPED TO FOREIGN ENTITIES, ARE THEY

1 CLASS MEMBERS?

2 **MR. SCARBOROUGH:** (SHAKES HEAD.)

3 NO, YOUR HONOR, THEY'RE NOT.

4 **THE COURT:** I KNOW THAT'S WHAT YOU THINK.

5 WHAT DO THE PLAINTIFFS HAVE TO SAY ABOUT THAT?

6 **MR. WILLIAMS:** YOU'RE TALKING ABOUT JUST DIRECT
7 PURCHASERS AT THIS STAGE, I ASSUME?

8 **THE COURT:** WELL, YES, AND CLEARLY THEY'RE NOT IP
9 CLASS MEMBERS, BUT I'M NOT EVEN SURE THEY'RE DP CLASS MEMBERS,
10 IN WHICH CASE WOULD IT NOT BE EXCLUDED FOR THAT REASON, IF
11 NOTHING ELSE?

12 **MR. WILLIAMS:** YEAH, I THINK THAT'S A SIMPLER POINT.
13 IF IT'S --

14 **THE COURT:** THAT IT'S WHAT?

15 **MR. WILLIAMS:** -- FOREIGN PURCHASER AND IT'S BILLED
16 FROM AND IT'S NOT WITHIN THE EXPERT EXCEPTION, THEN I THINK IT'S
17 NOT WITHIN OUR CLAIMS BECAUSE OUR CLAIMS WERE BOUGHT HERE, SRAM
18 BOUGHT HERE.

19 **THE COURT:** BUT THAT'S ALL THEY'RE ASKING FOR.
20 THEY'RE SAYING IF ITS -- IF ITS ONLY CONNECTION TO THE U.S. IS
21 THAT IT WAS BILLED FROM THE U.S., WHICH THEN TO ME MEANS IT WAS
22 BILLED TO A FOREIGN ENTITY, SHIPPED TO A FOREIGN ENTITY, THEN
23 IT'S NOT THE SUBJECT OF THIS CLASS.

24 SIMILARLY IF IT'S SHIPPED FROM THE U.S. BUT BILLED TO
25 A NON-U.S. ENTITY, SHIPPED TO A NON-U.S. ENTITY, IT'S NOT THE

1 SUBJECT OF THIS CLASS ACTION. THAT'S WHAT THEY'RE SAYING, AND
2 I'M WONDERING IF THAT ISN'T CORRECT.

3 **MR. WILLIAMS:** I THINK FOR THOSE CATEGORIES, IT'S
4 WITHIN THE PART OF THE EXPORT COMMERCE, AND I THINK CONGRESS
5 CARVED OUT THAT PART.

6 **THE COURT:** SO IN OTHER WORDS, IT IS CORRECT.

7 **MR. WILLIAMS:** I THINK SO, YOUR HONOR.

8 **THE COURT:** HMM.

9 **MR. MICHELETTI:** WELL, FROM THE INDIRECT PURCHASER'S
10 PERSPECTIVE --

11 **THE COURT:** WELL, YOU HAVE A DIFFERENT PROBLEM. YOUR
12 PROBLEM IS THAT IT WAS BOUGHT OUTSIDE THE U.S., SHIPPED OUTSIDE
13 THE U.S., PAID OUTSIDE THE U.S., BUT IT EVENTUALLY ENDED UP IN
14 THE U.S. BOUGHT BY SOMEONE IN THE U.S.

15 AND THE ARGUMENT THAT YOU WOULD MAKE AND THAT I MIGHT
16 OR MIGHT NOT AGREE WITH -- WELL, THE PART THAT I MIGHT AGREE
17 WITH WOULD BE THAT IF YOU COULD SHOW THAT NOT ONLY WAS IT JUST
18 SORT OF HAPPENSTANCE THAT IT ENDED UP IN THE U.S. -- AUNT ESTHER
19 BOUGHT IT ON HER TRIP TO EUROPE AND BROUGHT IT HOME -- BUT THAT
20 IT WAS CREATED SPECIFICALLY TO BE SOLD TO AN ENTITY WHICH WAS
21 GOING TO USE IT IN THE U.S. AND EVERYONE KNEW IT.

22 IN OTHER WORDS, LET'S SAY IT WAS A CELL PHONE AND IT
23 WAS BEING MANUFACTURED ABROAD, TRUE ENOUGH, BUT IT WAS BEING
24 MANUFACTURED IN A WAY THAT IT COULD ONLY BE USED IN THE U.S.
25 BECAUSE IT WAS -- THAT IT WAS A GSM OR IT WASN'T A GSM OR

1 WHATEVER, AND EVERYONE KNEW THAT IT WAS BOUND FOR THE U.S.
2 MARKET, EVERYONE KNEW THAT THIS PARTICULAR TYPE OF SRAM HAD BEEN
3 COMMISSIONED TO BE MADE TO FIT INTO THIS CELL PHONE WHICH WAS
4 BEING DESIGNED TO U.S. STANDARDS AND CLEARLY GOING TO BE SENT TO
5 THE U.S., THEN I WOULD SAY, YES, THAT THAT WOULD SEEM TO ME TO
6 BE -- HAVE A DOMESTIC EFFECT.

7 SHORT OF THAT, IF IT WAS JUST SORT OF LIKE THE U.S.
8 BUYS A LOT OF CELL PHONES. THIS ONE PROBABLY WAS GOING TO GO
9 THERE, TOO. THAT MIGHT NOT BE ENOUGH. YOU KNOW, JUDGE
10 ILLSTON'S COMMENT THAT WE CAN'T JUST BASE THIS ON INTENT AND
11 SORT OF SERENDIPITY. THAT MIGHT NOT BE ENOUGH.

12 BUT IF YOU HAVE MORE, AND YOU SAY YOU DO, THEN THAT
13 MORE MIGHT MAKE IT ENOUGH. THAT'S WHAT I'M THINKING, AND THAT'S
14 THE KIND OF FACTUAL STUFF THAT MAYBE WE DON'T REALLY KNOW FOR
15 SURE IS THERE UNTIL IT IS THE SUBJECT OF AN EVIDENTIARY HEARING,
16 SLASH, TRIAL.

17 **MR. SCARBOROUGH:** WELL, SO, YOUR HONOR, OBVIOUSLY FOR
18 SAMSUNG, WE AGREE WITH YOUR COMMENTS WITH RESPECT TO SHIP FROM
19 AND BILLED FROM. WE DON'T THINK YOU CAN SQUARE THOSE CATEGORIES
20 OF PURCHASES WITH THE PLAIN LANGUAGE OF THE DIRECT CLASS
21 CERTIFICATION ORDER.

22 THESE ARE SIMPLY NOT PURCHASES MADE DIRECTLY IN THE
23 UNITED STATES, AND I WOULD SUBMIT THAT, YOUR HONOR, AT LEAST AS
24 TO THOSE CATEGORIES, COULD AVOID GETTING TO THE FTAIA ISSUES IF
25 YOU SIMPLY FOUND THESE ARE SIMPLY NOT WITHIN THE -- THE -- THE

1 JURISDICTION OF THIS COURT AFTER HAVING MADE THE CLASS
2 CERTIFICATION DETERMINATION. YOU DON'T EVEN NEED TO GET TO THE
3 FTAIA ISSUES.

4 WE OBVIOUSLY ALSO AGREE WITH YOUR HONOR ON THE FTAIA
5 BEING JURISDICTIONAL, AT LEAST UNDER THE CURRENT STATE OF THE
6 LAW. I WOULD SUBMIT THAT THE PARTICULAR MOTION THAT WE MADE TO
7 YOU WAS A MOTION RAISING A FACTUAL CHALLENGE TO SUBJECT MATTER
8 JURISDICTION, WHICH IS BASICALLY HOW THE CASE LAW SAYS THOSE --
9 THIS IS THE WAY THESE MOTIONS ARE BROUGHT AFTER DISCOVERY IS
10 CLOSED. AND IF PLAINTIFFS HAVE FACTS THEY WANT TO BRING TO
11 BEAR, THAT'S FINE. THEY CAN PUT THOSE IN AND THE COURT HAS TO
12 RESOLVE ANY FACTUAL DISPUTES.

13 IT'S REALLY SAMSUNG'S POSITION THAT THERE ARE NO
14 PERTINENT FACTUAL DISPUTES THAT MATTER WITH RESPECT TO THE FTAIA
15 MOTIONS IN THE DIRECT CASE AND THAT THE FACTS THAT THEY HAVE
16 PROFFERED DON'T MATTER. AND SO THAT'S WHY YOU HAVEN'T SEEN
17 FACTS FROM SAMSUNG'S SIDE IN THE DIRECT CASE, IS THAT WE THINK
18 BASED ON THE CASE LAW THAT WE PRESENTED TO YOU, BASED ON THE
19 LEGAL ARGUMENTS, THE DEFINITIONS OF THESE TYPES OF COMMERCE,
20 THAT WE WIN BASED ON THIS LAW. AND IT'S FINE FOR YOU TO
21 CONSIDER THEIR FACTS, BUT THE FACTS HAVE TO MATTER, AND THE
22 FACTS THEY PROFFER DON'T MATTER.

23 **THE COURT:** WELL, "BILLED TO U.S." I THINK DOES. I
24 THINK THERE'S -- I MEAN, I DON'T KNOW IF EVERYTHING THEY SAY IS
25 TRUE, BUT IF EVERYTHING THEY DO SAY IS TRUE, THEN I THINK THAT

1 CERTAINLY ONE COULD INFER THAT SRAM THAT WAS BILLED TO THE U.S.
2 HAD A DOMESTIC EFFECT.

3 **MR. SCARBOROUGH:** OKAY. AND, YOUR HONOR --

4 **THE COURT:** AND YOU SAY NO.

5 **MR. SCARBOROUGH:** -- WE DISAGREE BASED ON THE --
6 MCCLOFERTY (PHONETIC) CASE IS REALLY THE ONE MOST ON POINT, AND
7 IT WAS THE ONE THAT WAS NEVER DIRECTLY ADDRESSED BY THE
8 PLAINTIFFS. SO WE THINK -- THAT'S ANOTHER COURSE -- COURT THAT
9 HAS LOOKED PRECISELY AT THOSE ISSUES, THOSE TYPES OF SALES, AND
10 SAID THIS, OF COURSE, DOES NOT HAVE A DIRECT EFFECT ON U.S.
11 COMMERCE.

12 SO WE'RE HAPPY TO STAND ON THE RECORD WE MADE, AND WE
13 THINK THAT YOU SHOULD MAKE THAT RULING NOW RATHER THAN LEAVE
14 THAT FOR THE JURY TO MAKE AT A LATER DATE.

15 **THE COURT:** I'M NOT SAYING THE JURY WOULD MAKE IT.
16 I'M SAYING I WOULD MAKE IT, BUT I WOULD HEAR EVIDENCE ON IT, AND
17 I WOULD RESOLVE DISPUTED FACTS AND DETERMINE WHETHER INFERENCES
18 SHOULD BE DRAWN FROM FACTS AND I WOULD DO THAT WHILE I'M SITTING
19 LISTENING TO THE TRIAL ANYWAY.

20 **MR. SCARBOROUGH:** I UNDERSTAND. AND CYPRESS MAY HAVE
21 A DIFFERENT VIEW WITH RESPECT TO THE INDIRECT MOTION.

22 **MR. WINTERS:** AGAIN, GARY WINTERS FOR CYPRESS.

23 WE HAVE THE SAME VIEW WITH RESPECT TO THE DIRECT
24 PURCHASERS, BUT JUST THE ADDITIONAL POINT I WANT TO MAKE ON THE
25 INDIRECT PURCHASERS IS THAT THE -- AND I MADE THIS POINT AT THE

1 MOTIONS HEARING BACK IN OCTOBER -- IS THAT THE INDIRECT
2 PLAINTIFFS HAVE NOT MADE ANY EFFORT TO SEPARATE THEIR DAMAGES --
3 (SIMULTANEOUS COLLOQUY.)

4 **THE COURT:** YEAH, THAT WAS MY OTHER PROBLEM. WHAT
5 ARE YOU GOING TO DO -- LET'S SAY I DO DECIDE IT NOW OR DECIDE IT
6 AT TRIAL. WHAT IF IT TURNS OUT THAT YOU HAVEN'T PROVED A
7 DOMESTIC EFFECT FROM THESE FOREIGN PURCHASES AND YOU HAVE NOT
8 SEGREGATED THEM OUT, YOU LOSE YOUR WHOLE CASE.

9 **MR. MICHELETTI:** WELL, FIRST OF ALL, WE DON'T THINK
10 YOU GO THERE INITIALLY. WE THINK YOU HAVE --

11 **THE COURT:** BUT YOU GOT TO --

12 (SIMULTANEOUS COLLOQUY.)

13 **THE COURT:** -- ASSUME THAT THAT MIGHT -- YOU GOT TO
14 HAVE A BACKUP PLAN.

15 **MR. MICHELETTI:** OKAY. AND IN THE DEFENDANT'S
16 MOTION, THEY THEMSELVES SET FORTH A -- THEY PROPOSED A PROCEDURE
17 FOR ADDRESSING IT, AND THAT IS THAT WE GO BACK TO SOME EXTENT TO
18 THE DRAWING BOARD ON THE DAMAGES PORTION.

19 **THE COURT:** WELL, NO, THEIR PROCEDURE IS YOUR CASE
20 GETS THROWN OUT.

21 **MR. MICHELETTI:** NO, THAT'S NOT WHAT THEY SAID IN
22 THEIR MOTION. IN THEIR MOTION, THEY SAID WE TAKE 30 DAYS, WE
23 DECIDE HOW TO HANDLE DAMAGES GOING FORWARDS.

24 **THE COURT:** REALLY? I MISSED THAT PART.

25 **MR. WINTERS:** WELL, I -- I -- THAT IS WHAT IT SAYS IN

1 THE MOTION. I THINK OUR POINT IS THAT THE WAY IT'S CURRENTLY
2 STRUCTURED, THE CURRENT DAMAGES ANALYSIS COULD NOT STAND. IF
3 THEY CAN COME BACK AND FIND SOME WAY TO SEGREGATE THAT, THEIR
4 EXPERT WOULD NEED TO DO THAT. WE'D NEED TO DEPOSE HIM. I MEAN,
5 IT WOULD BE -- IT WOULD BE ANOTHER PROCEDURE ON THAT.

6 BUT I THINK, AGAIN, AS MR. SCARBOROUGH SAID, THESE
7 ARE NOT, IN OUR VIEW, FACTUAL ISSUES THAT REQUIRE RESOLUTION AND
8 REQUIRE EVIDENCE FOR THE COURT TO DETERMINE AT TRIAL. THIS
9 QUESTION ABOUT WHETHER THE INDIRECT PLAINTIFFS HAVE SUFFICIENTLY
10 SEGREGATED, THAT'S A DECISION THAT CAN BE MADE NOW. IT'S BASED
11 ON THE LEGAL ANALYSIS LEADS TO WHETHER THEIR DAMAGES CLAIM CAN
12 PROCEED NOW OR WHETHER THEY HAVE TO COME BACK WITH NEWLY
13 COMPLETELY NEW DAMAGES ANALYSIS.

14 **THE COURT:** WELL, THAT'S THE BIG -- ANOTHER ADVANTAGE
15 OF MY BIFURCATION SCHEME, IS THAT WE COULD DO THAT AFTER THE --

16 **MR. MICHELETTI:** IF NECESSARY.

17 **THE COURT:** IF THERE IS A TRIAL.

18 **MR. MICHELETTI:** IF NECESSARY.

19 **THE COURT:** OKAY. ALL RIGHT. WELL, WE'RE GOING TO
20 HAVE TO STOP NOW. I'VE KEPT MY REPORTER WAY LONGER THAN I
21 SHOULD.

22 SO I'D LIKE FOR YOU ALL TO SIT DOWN AND JUST SPELL
23 OUT EXACTLY EVERYTHING EVERYBODY'S GOING TO FILE WHEN SO THAT WE
24 MAKE SURE WE COVER EVERYTHING THAT NEEDS TO BE DONE. AND I
25 REALLY WANT YOU TO DO WHAT YOU CAN TO TRY TO SETTLE SOME OF THE

1 CASE, IF NOT ALL OF THE CASE, AND SEE IF YOU CAN REACH A LOT OF
2 STIPULATIONS FOR -- FOR VARIOUS THINGS THAT CAN'T BE SETTLED IF
3 THEY CAN'T.

4 AND I'LL SEE YOU, IF YOU HAVEN'T SETTLED, ON THE
5 18TH.

6 **COUNSEL:** THANK YOU VERY MUCH.

7 **MR. COTCHETT:** THANK YOU, YOUR HONOR.

8 **MR. SCARBOROUGH:** THANK YOU.

9 (PROCEEDINGS WERE CONCLUDED AT 4:17 P.M.)

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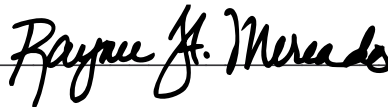
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CERTIFICATE OF REPORTER

I, RAYNEE H. MERCADO, OFFICIAL REPORTER FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN MDL NO. 07-01819CW, IN RE SRAM ANTITRUST LITIGATION, WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY ME AT THE TIME OF FILING.

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RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR

WEDNESDAY, DECEMBER 22, 2010